

## EXHIBIT 400

1                   IN THE UNITED STATES DISTRICT COURT  
2                   FOR THE NORTHERN DISTRICT OF OHIO  
3                   EASTERN DIVISION  
4    In re:   NATIONAL PRESCRIPTION    )   CASE NO.  
      OPIATE LITIGATION                    )   1:17-MD-2804  
5    )   Judge  
      APPLIES TO ALL CASES                )   Dan Aaron Polster

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7                   HIGHLY CONFIDENTIAL - SUBJECT TO FURTHER  
8                   CONFIDENTIALITY REVIEW  
9  
      DEPOSITION FOR PLAINTIFF

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DEPONENT:           GARY MILLIKAN  
DATE:                JANUARY 11, 2019  
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A P P E A R A N C E S

FOR THE PLAINTIFF: DANIEL P. GOETZ, Esquire  
BRIAN ROOF, Esquire  
Weisman Kennedy & Berris CO LPA  
1600 Midland Building  
101 West Prospect Street  
Cleveland, Ohio 44115  
216-781-1111  
dgoetz@weismanlaw.com  
broof@weismanlaw.com

Via Speakerphone: MICHAEL ELSNER, Esquire  
KAITLYN EEKHOFF, Esquire  
Motley Rice  
28 Bridgeside Boulevard  
Mount Pleasant South Carolina  
29464  
843-216-9250  
melsner@motleyrice.com

FOR THE DEFENDANT: PAUL B. HYNES, Jr. Esquire  
CVS entities R. MILES CLARK, Esquire  
Zuckerman Spaeder  
Suite 1000  
1800 M Street  
Washington, DC 20036  
202-778-1800  
phynes@zuckerman.com  
mclark@zuckerman.com

FOR THE DEFENDANT: SARAH E. HAMON, Esquire  
Cardinal Health Armstrong Teasdale  
Suite 1800  
7700 Forsyth Boulevard  
St. Louis, Missouri 63105  
314-552-6672  
sharmon@ArmstrongTeasdale.com

1 APPEARANCES - Continued

2

3 FOR THE DEFENDANT: SCOTT D. QUELLHORST, Esquire  
Walmart Jones Day  
4 via speakerphone 77 West Wacker Street  
Chicago, Illinois  
5 312-269-4251  
squellhorst@jonesday.com

6

7 FOR THE DEFENDANT: CHRISTIAN W. SAUCEDO, Esquire  
AmerisourceBergen Reed Smith  
8 via speakerphone Three Logan Square  
Suite 3100  
9 1717 Arch Street  
Philadelphia, PA 19103  
10 215-851-8204  
csaucedo@reedsmith.com

11

12 FOR THE DEFENDANT: EMILY DILLINGHAM, Esquire  
Endo entities Arnold & Porter  
13 Par entities 250 West 55th Street  
via speakerphone New York, New York 10019  
14 212-836-7408  
emily.dillingham@arnoldporter.com

15

16

17

ALSO PRESENT: Ben Stanson, videographer  
18 Jon Knowles, trial technologist

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1           The deposition of GARY MILLIKAN, taken on  
2   discovery, pursuant to Notice heretofore filed, in the  
3   Latitude Room, 2nd Floor, of Le Meridien Indianapolis,  
4   123 South Illinois Street, Indianapolis, Indiana, on  
5   January 11, 2019, at approximately 8:59 a.m.; upon  
6   oral examination, and to be used in accordance with  
7   the Federal Rules of Civil Procedures.

8

9                               \*           \*           \*

10

11           THE VIDEOGRAPHER: We are now on the record.  
12   My name is Ben Stanson. I'm the videographer for  
13   Golkow Litigation Services. Today's date is  
14   January 11, 2019, and the time is 8:59 a.m.

15           This video deposition is being held in  
16   Indianapolis, Indiana, in the matter of National  
17   Prescription Opiate Litigation, MDL Number 2804,  
18   pending in the U.S. District Court, Northern District  
19   of Ohio, Eastern Division.

20           The deponent is Gary Millikan.

21           Will counsel please identify yourselves for  
22   the record?

23           MR. ROOF: Brian Roof, for Plaintiff, law  
24   firm of Weisman Kennedy and Berris.

25           MR. GOETZ: Dan Goetz, on behalf of

1 Plaintiff.

2 MS. HARMON: Sarah Harmon for Cardinal  
3 Health.

4 MR. CLARK: Miles Clark, Zuckerman and  
5 Spaeder, on behalf of CVS Indiana, LLC; CVS Rx  
6 Services, Inc., and the witness.

7 MR. HYNES: Paul Hynes, Zuckerman and  
8 Spaeder, on behalf of the same parties.

9 THE VIDEOGRAPHER: Would counsel on the phone  
10 please identify yourselves for the record?

11 MS. DILLINGHAM: Hi. Emily -- go ahead.

12 MR. ELSNER: Michael Elser, from Motley Rice,  
13 on behalf of the Plaintiffs.

14 MS. DILLINGHAM: Emily Dillingham, Arnold  
15 Porter, on behalf of the Endo and Par Defendants.

16 MR. SAUCEDO: Christian Saucedo, from Reed  
17 Smith, on behalf of AmerisourceBergen.

18 THE VIDEOGRAPHER: Thank you. Our court  
19 reporter is Kim Keene.

20 Will you please swear in the witness?  
21  
22  
23  
24  
25

1 \* \* \*

2 GARY MILLIKAN, after having first been duly  
3 administered an oath, testified as follows:

4 THE WITNESS: I do.

5 THE REPORTER: Thank you.

6 \* \* \*

7

8 EXAMINATION

9 BY MR. ROOF:

10 Q. Good morning, Mr. Millikan.

11 A. Good morning.

12 Q. We met off the record. My name is Brian  
13 Roof, and as I said earlier, I represent the  
14 Plaintiffs.

15 Can you state your full name for the record  
16 and spell it?

17 A. My name is Gary Lee Millikan. G-A-R-Y,  
18 L-E-E, M-I-L-L-I-K-A-N.

19 Q. And where do you currently live?

20 A. I live at Indianapolis, Indiana.

21 Q. What's the address?

22 A. 10944 Echo Trail, 46236.

23 Q. And what's your highest level of education  
24 that you've achieved?

25 A. I have a bachelor of science.

1 Q. And what was that in?

2 A. It was in pharmacy.

3 Q. Pharmacy?

4 And from what institute did you get that  
5 degree from?

6 A. I graduated from Purdue University.

7 Q. Do you have any post degrees? Graduate  
8 degrees?

9 A. No, sir.

10 Q. Are you a pharmacist?

11 A. Yes, I am a pharmacist.

12 Q. Do you have any other certifications or  
13 anything like that, besides your degree from Purdue  
14 University?

15 A. No, I don't believe so.

16 Q. No certifications in DEA regulations or  
17 anything like that?

18 MR. HYNES: Objection to form.

19 THE WITNESS: No, I don't believe so.

20 Q. When were you first hired by the Indianapolis  
21 distribution center?

22 MR. HYNES: Objection to form.

23 THE WITNESS: The -- I was first hired into  
24 the distribution center in 1995.

25 Q. And were you hired by CVS Indiana LLC or CVS

1 Pharmacy, Inc?

2 A. This is prior to CVS. I began my career with  
3 Hook drugs, which was purchased by Revco, and in 1995,  
4 I went into the distribution center.

5 Q. And in 1995, who was your employer?

6 A. Revco.

7 Q. And then when did you work for Hook?

8 A. I worked for Hook's from 1977 until the Revco  
9 acquisition.

10 Q. Do you know when that occurred?

11 A. In 1995.

12 Q. And then in 1995, when you worked for Revco,  
13 you went to the Indianapolis distribution center?

14 A. Yes, I did.

15 Q. And where were you before that?

16 A. I was in the Hook corporate office.

17 Q. And what did -- was your position in 1995  
18 with Revco?

19 A. I was a pharmacy manager for distribution.

20 Q. And how long did you hold that role for?

21 A. Until 1998.

22 Q. And what happened in 1998?

23 A. After CVS purchased Revco, I was promoted  
24 from pharmacy manager to operations manager for the  
25 entire facility.

1 Q. So when CVS purchased Revco in 1998, you were  
2 promoted to operations manager?

3 A. Shortly after the purchase. I don't remember  
4 the exact time frame, but it wasn't long. It was a  
5 few months.

6 Q. So, the year was 1998?

7 A. Yes.

8 Q. And then what was your next position after  
9 operations manager?

10 A. I held the position of operations manager  
11 until probably 2009 or '10, and they changed my title  
12 to production manager because a decision had been made  
13 that each facility would only have one operations  
14 manager.

15 Q. And so, was that a demotion?

16 MR. HYNES: Objection to form.

17 THE WITNESS: I don't -- my role did not  
18 change. My title changed.

19 Q. And there was another operations manager,  
20 though?

21 A. Before that, there was a senior operations  
22 manager, and his title was changed to operations  
23 manager.

24 Q. And who was that?

25 A. Andy Koropoulis.

1 Q. And then your title was changed from  
2 operations manager to production manager?

3 A. Yes, it was.

4 Q. But your role did not change?

5 A. No, it did not.

6 Q. Your duties did not change?

7 A. No, they did not.

8 Q. And then from 2009/2010, how long did you  
9 hold the production manager?

10 A. Until June of 2012, when I retired from the  
11 company.

12 Q. Going back to your operations manager  
13 position from 1998 to 2009 or 2010, what were your  
14 duties?

15 A. The facility is 1 million square feet,  
16 approximately 6- to 900 employees, five days a week,  
17 three shift operation. I had various duties over that  
18 time period, over different departments, whether it be  
19 shipping, order filling, inventory control,  
20 receiving.

21 Q. Anything else?

22 A. And pharmacy at times. I -- I believe I had  
23 responsibilities for everything in the facility at  
24 some time during that time period.

25 Q. When you say you had responsibilities for

1 everything at some point, was that on a continuous  
2 basis or is that at separate points?

3 A. At separate points. Throughout that time  
4 period, CVS was acquiring other companies. There were  
5 many times when the director, the senior ops manager,  
6 and the HR manager were out of the building for a  
7 significant period of time and I was the senior person  
8 in the building.

9 Q. As operations manager, did you report  
10 directly to Mark Nicastro?

11 MR. HYNES: Objection. Time period.

12 MR. ROOF: As operations manager.

13 THE WITNESS: I -- as operations manager  
14 during that period --

15 Q. Yes.

16 A. -- '98 to '09, he was only there for the  
17 period of '08 and '09, and I believe I reported  
18 directly to him during that time, although it is  
19 possible that I reported to the senior ops manager  
20 part of that time. There's a few different org  
21 charts.

22 Q. I noticed that.

23 And who's the senior ops manager again?

24 A. Andy Koropoulis.

25 Q. Okay. So, it's your testimony that Mark



1 Nicaastro was only director from '08 to '09?

2 A. No. He came in the building in '08. I  
3 thought we were talking about the time period up to  
4 '09. He is still the director of the facility.

5 Q. And prior to his -- well, strike that.

6 When did he arrive at the Indianapolis DC?

7 A. He arrived in July of 2008.

8 Q. So from the -- the period that you were  
9 operations manager, from '08 to approximately 2010,  
10 Mark Nicaastro was the director of the Indianapolis DC?

11 MR. HYNES: Objection. Mischaracterizes the  
12 testimony.

13 THE WITNESS: Yes, he was.

14 Q. And who was the director of the Indianapolis  
15 DC prior to that?

16 A. Prior to Mark Nicaastro, it was Dana Lilly.

17 Q. And how long did Dana Lilly have the position  
18 of director?

19 A. I don't remember when he came in. Early  
20 2000s until 2008, when he was promoted.

21 Q. And who was the director prior to Dana  
22 Lilly?

23 A. That was Gary Kanapka.

24 Q. And when was he the director of the  
25 Indianapolis DC?

1           A. I don't remember exactly, but it would be '98  
2 or '99 until early 2000s.

3           Q. And when you were production manager from  
4 1998 through 2009, 2010, who did you report to?

5           A. I was not production manager during that time  
6 period. I was pharmacy manager and then operations  
7 manager.

8           Q. You were pharmacy manager when?

9           A. 1995 to 1998.

10          Q. And then from 1998 through 2010, you were --

11          A. From 1998 until about 2009 or '10, I was the  
12 operations manager.

13          Q. Okay. And then from about 2009 or 2010  
14 through June of 2012, when you retired, you were the  
15 production manager?

16          A. Yes, I was.

17          Q. Okay. Who did you report to as the  
18 production manager?

19          A. It was probably Mark Nicastro, the director,  
20 for that entire time. It's possible that it was  
21 through Andy Koropoulis, the operations manager.

22          Q. Why do you say it's possible?

23          A. I -- I don't remember the organization charts  
24 as -- during that period.

25          Q. Who did your reviews during the time you were

1 production manager?

2 A. Again, I -- I'm not completely sure. I  
3 believe it's the director, Mark Nicastro. It is  
4 possible that it was the operations manager, Andy  
5 Koropoulis.

6 Q. And that same is true when you were  
7 operations manager, correct?

8 A. Yes, it is.

9 Q. Okay. And when you were operations manager,  
10 were you employed by CVS Pharmacy, Inc., or CVS  
11 Indiana, LLC?

12 A. My W2 says: CVS Indiana, LLC.

13 Q. And that was the entire time you were  
14 employed by a CVS entity?

15 A. I'm not -- I'm not sure.

16 Q. But the time you were operations manager and  
17 production manager, you were employed by CVS Indiana,  
18 LLC?

19 MR. HYNES: Objection. Mischaracterizes his  
20 testimony.

21 THE WITNESS: I'm not sure how long that  
22 title -- that company was in place without going back  
23 and looking at all of those W2s.

24 Q. So when you were an operations manager,  
25 though, you were a CVS Indiana, LLC employee?

1 MR. HYNES: Same objection.

2 THE WITNESS: I believe that CVS Indiana, LLC  
3 was specifically my company.

4 Q. We're going to talk about suspicious order  
5 monitoring and diversion, and I just want to make sure  
6 we're on the same page as to what those terms mean.

7 And the way I define suspicious order  
8 monitoring is the monitoring of orders that are  
9 unusual size, orders that deviate substantially from a  
10 normal pattern, and orders that are of unusual  
11 frequency.

12 Do you understand that?

13 A. The suspicious orders that we had to  
14 determine would meet that criteria.

15 Q. Okay. And diversion would be diverting  
16 controlled substances to an illegitimate channel  
17 rather than distributing it to medical, scientific, or  
18 industrial channels?

19 MR. HYNES: Objection to form.

20 THE WITNESS: The -- my role in diversion  
21 when I was directly -- part of it was to ensure that  
22 the drugs that we shipped went to legitimate  
23 pharmacies for legitimate concerns.

24 Q. So, can we have an understanding, though,  
25 that diversion means diverting of controlled

1 substances to illegitimate channels?

2 MR. HYNES: Objection to form.

3 THE WITNESS: I have -- my role, when I was  
4 directly involved with the suspicious ordering, was to  
5 make sure that what we shipped was legitimate, to a  
6 legitimate store for a legitimate reason.

7 Q. We'll use that as you -- the definition of  
8 diversion then, okay?

9 A. Okay.

10 Q. And hydrocodone is a controlled substance?

11 A. Yes, it is.

12 Q. And hydrocodone combination products are a  
13 controlled substance?

14 A. Yes, they are.

15 Q. And another name for hydrocodone combination  
16 products is HCPs?

17 A. I'm not sure that I'm aware of that --

18 Q. You never --

19 A. -- term.

20 Q. You never heard of the term "HCPs" before?

21 A. HCP?

22 Q. Yes.

23 A. No, I don't believe I have.

24 Q. Okay. As operations manager and production  
25 manager, did you oversee the pharmacy?

1           A. There were times when I did oversee the  
2 pharmacy. There were some parts of the time when I  
3 did not.

4           Q. Can you tell me those dates?

5           A. I don't know for sure, but I believe from  
6 about 2009 till my retirement in June of 2012, I did  
7 not have direct responsibility for pharmacy.

8                   Prior to that, from '98 to '08, while I'm not  
9 completely sure that I always had it, I feel like I  
10 probably did.

11          Q. Why do you say "probably"?

12          A. I feel pretty certain that I did. I just  
13 don't remember.

14          Q. And why from 2009 through 2012 did you not  
15 have direct oversight of the pharmacy?

16          A. The director of the facility redid the  
17 responsibilities for Andy Koropoulis and myself, and  
18 he gave him the direct responsibility for pharmacy.

19          Q. And that was Mark Nicastro?

20          A. Yes, it was.

21                   (CVS-Millikan-115 was marked for  
22 identification.)

23          Q. And I want to hand you what is marked as  
24 Exhibit 115.

25                   MS. DILLINGHAM: Could you read the Bates

1 number for that document?

2 MR. ROOF: It's deposition testimony of Mark  
3 Nicastro.

4 Q. Like I said, Exhibit 115, his deposition  
5 transcript -- partial deposition transcript of Mark  
6 Nicastro. The first page is the cover page for the  
7 deposition transcript of the video deposition of Mark  
8 Nicastro dated December 6, 2018 in Indianapolis,  
9 Indiana.

10 Do you see that on the first page,  
11 Mr. Millikan?

12 A. I'm sorry. Repeat the question.

13 Q. First page is a cover page for the video  
14 deposition of Mark Nicastro dated December 6, 2018 in  
15 Indianapolis, Indiana.

16 Do you see that?

17 A. Yes.

18 Q. Okay. And then the second page is page 23?

19 A. Yes. Yes.

20 Q. And the question on line 15 says:

21 "When you joined in 2008, who was responsible  
22 for pharmacy related aspects of the business in  
23 Indianapolis?

24 Answer: "Gary Millikan was my operations  
25 manager and he oversaw the pharmacy."

1 Did I read that correctly?

2 A. Yes.

3 Q. Is that a correct statement?

4 A. I -- I was indirectly responsible. There was  
5 a pharmacy manager, I believe.

6 Q. So, Mark Nicastro is not directly correct in  
7 his testimony here?

8 MR. HYNES: Object to the form.  
9 Mischaracterizes the document.

10 THE WITNESS: I'm not sure how he meant that  
11 on "responsible."

12 Q. But you're saying you're now indirectly  
13 responsible for the pharmacy, correct?

14 A. In 2008, I -- in 2008, pharmacy fell under  
15 me, but there were other people that I managed that  
16 directly were involved with pharmacy.

17 Q. And who were those people?

18 A. While I -- I'm not sure on that date. It was  
19 either Steve Campbell or Gary Lamberth as the pharmacy  
20 manager, and there would have been a pharmacy  
21 supervisor or two.

22 Q. So there was a pharmacy manager under you,  
23 correct?

24 A. Yes.

25 Q. And then the pharmacy supervisor under you?



1           A. Yes. And then there would have been another  
2 pharmacy supervisor on the other shift.

3           Q. So two pharmacy supervisors under you?

4           A. Yes. Well, the second shift one did not  
5 directly report to me. They reported through a second  
6 shift manager.

7           Q. So the only two direct reports was the  
8 pharmacy manager and the pharmacy supervisor,  
9 correct?

10          A. My -- one of my direct reports would have  
11 been the pharmacy manager. The pharmacy supervisor  
12 would have reported to the pharmacy manager.

13          Q. And then under the pharmacy supervisor were  
14 the pickers and packers?

15          A. They would have had all of the warehouse  
16 associates: receiving, picking orders, shipping  
17 orders, returns.

18          Q. And that's what is called the pickers and  
19 packers?

20               MR. HYNES: Objection to form.

21               THE WITNESS: That's a term that is used. I  
22 prefer warehouse associates.

23          Q. Okay. We can use warehouse associates.

24               So indirectly, the warehouse associates  
25 reported through you, correct?

1           A.   Yes, they did.

2           Q.   What were your duties regarding suspicious  
3   order monitoring of controlled substances and  
4   diversion?

5           MR. HYNES:  Objection.  Time period.

6           Q.   While you were operations manager.

7           A.   While I was operations manager from 1998 till  
8   2009 or '10, I had indirect knowledge and oversight  
9   over the Suspicious Order Monitoring program.

10          Q.   When you said you had indirect oversight over  
11   the SOM, what do you mean?

12          A.   I mean that the pharmacy manager, supervisor,  
13   admin. personnel, and the warehouse associates in the  
14   controlled substance area were actually doing the  
15   program.

16          Q.   And so what was your role as indirect  
17   oversight over SOM?

18          A.   Just the fact that that reported up through  
19   me.  Again, it was a million square feet, the number  
20   of associates.  It was one of my responsibilities.

21          Q.   So the people that reported to you, or up  
22   through you actually did the work for SOM, and -- but  
23   since you were over them or managed them, you had  
24   indirect oversight of SOM; is that correct?

25          A.   Yes.

1 Q. Anything else you did regarding suspicious  
2 order monitoring or diversion?

3 MR. HYNES: Objection. Time period.

4 Q. Same time period.

5 A. The same time period?

6 No.

7 Q. And what about your duties regarding  
8 suspicious order monitoring of controlled substances  
9 and diversion when you were production manager?

10 MR. HYNES: Objection. Compound.

11 Go ahead.

12 A. When I was production manager, Andy  
13 Koropoulis had responsibility of pharmacy, but because  
14 of my background in pharmacy, I had -- some knowledge  
15 of the process and I continued to work with the DEA on  
16 the audits and --

17 Q. Besides working with the DEA and audits,  
18 anything else?

19 A. I don't believe so.

20 Q. Did you work with the DEA on audits when you  
21 were operations manager?

22 A. Yes, I did.

23 Q. And what do you mean by you worked with the  
24 DEA on audits?

25 A. When the DEA came to the facility to do their

1     annual -- not annual, but do an audit, I was one of  
2     the persons who was with them.

3             Q.   And what do you mean by one of the persons  
4     with them?

5             A.   They had my name, I believe, on the document  
6     when they came to the facility.

7             Q.   On what document?

8             A.   I don't remember what that's called.

9             Q.   And so what did you do during these audits?

10            A.   Oh, the information that they requested,  
11     balancing of the inventory, answering any questions.

12            Q.   So you provided the information requested,  
13     you balanced the inventory, and you answered  
14     questions.

15                     Anything else during the audit?

16            A.   No, not that I recall.

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7 Q. Okay. Who else was involved in the DEA  
8 audits?

9 A. Normally, it was two inspectors.

10 Q. And those two inspectors were from the DEA,  
11 correct?

12 A. Yes.

13 Q. And who was involved from CVS Indiana?

14 A. The loss -- someone from loss prevention.  
15 And then if they wanted to talk to someone, warehouse  
16 associate or --

17 Q. So it was just you and the loss prevention  
18 person handling the DEA audits?

19 A. As best I can remember.

20 Q. And who took the lead on the DEA audits, you  
21 or the loss prevention?

22 MR. HYNES: Object to the form.

23 A. I believe we had shared responsibility.

24 Q. And again, your responsibility was providing  
25 the information requested, balancing, and then

1     answering questions?

2             A.   Yes.

3             Q.   And that was balancing what again?

4             A.   The inventory of a selected controlled  
5     substances.

6             Q.   And you had no other responsibilities during  
7     the DEA audit?

8             A.   Not that I can recall at this time.   I'm --

9             Q.   As either operations manager or production  
10    manager, were you responsible for implementing the  
11    standard operating procedure for controlled drugs?

12            MR. HYNES:  Objection to form.

13            A.   Could you repeat that?

14            Q.   As either -- well, let's start with as  
15    operations manager.  Were you responsible for  
16    implementing the standard operating procedures for  
17    controlled drugs?

18            MR. HYNES:  Objection to form.

19            A.   The -- no, I was not.

20            (CVS-Millikan-117 was marked for  
21    identification.)

22            Q.   I'm going to go to Exhibit 117, which is  
23    another partial deposition transcript.

24            MR. HYNES:  Thanks, Brian.

25            Q.   Again, first page of Exhibit 117 is the cover

1 page for the video deposition of Mark Nicastro on  
2 December 6, 2018, correct?

3 A. Yes.

4 Q. And then the next page is page 46 of  
5 Mr. Nicastro's deposition, correct?

6 A. Yes.

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23           Q. And it's your testimony, when you were  
24   production manager, that Andy had control, or oversaw,  
25   the pharmacy?

1 MR. HYNES: Objection.

2 A. While I don't remember the exact dates in  
3 that whole time period, there was a time period when  
4 he had responsibility for pharmacy.

5 Q. So sometime when you were production manager,  
6 he had responsibility for pharmacy?

7 A. I believe so.

8 Q. And did you have responsibility for pharmacy  
9 at any time when you were production manager?

10 A. I don't remember.

11 Q. Then in January of 2002, you started as a  
12 part-time employee with CVS Indiana, LLC?

13 MR. HYNES: Did you say 2002?

14 A. No.

15 MR. GOETZ: 2013. January of 2013.

16 MR. HYNES: Could you repeat the question.  
17 2002.

18 MR. ROOF: Yeah, sure.

19 BY MR. ROOF:

20 Q. Then in January of 2013, you started as a  
21 part-time employee for CVS Indiana, LLC?

22 A. I believe it was actually in November of  
23 2012.

24 (CVS-Millikan-18 was marked for  
25 identification.)

1 Q. I want to hand you what has been marked as  
2 Exhibit 18. Maybe we can just refresh your  
3 recollection here.

4 A. Okay.

5 Q. This is your personnel file.

6 For the people on the phone, this document  
7 was produced by CVS in the past couple of days.  
8 There's no Bates number on it, and --

9 MR. HYNES: We can do a Bates number if you  
10 want.

11 MR. GOETZ: It doesn't matter.

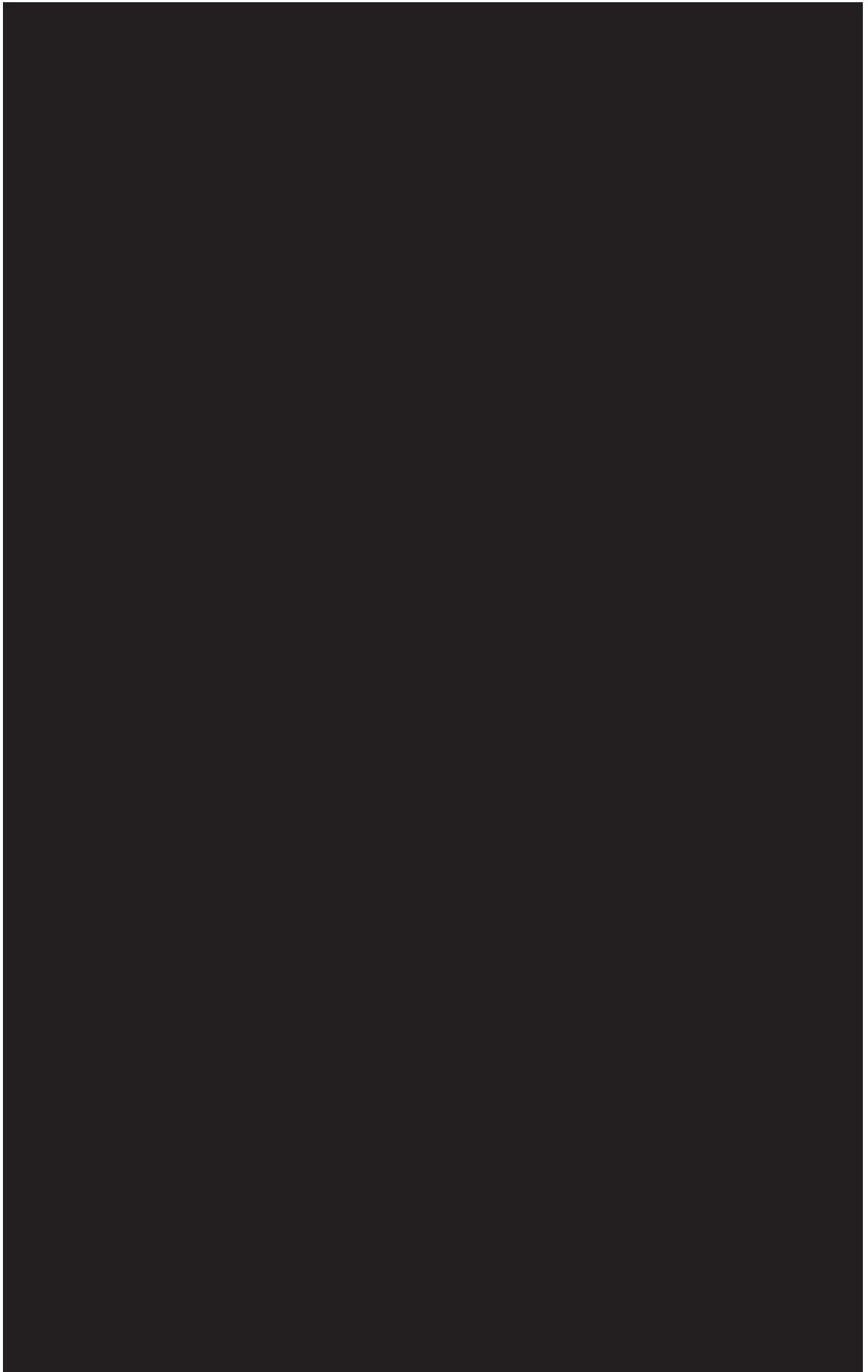
12 MR. HYNES: Okay.

13 BY MR. ROOF:

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MR. ROOF: Can we go off the record?

MR. HYNES: Yeah. Yeah, that would be good  
for me, too.

THE VIDEOGRAPHER: We're off the record at  
9:54 a.m.

(There was a brief recess.)

THE VIDEOGRAPHER: We are back on record at  
10:07 a.m.

BY MR. ROOF:



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20           Q. Did you know that there was an opioid crisis  
21   sweeping the nation in 2006?

22           MR. HYNES: Objection to form.

23           A. I'm aware of opioids and the chance for  
24   abuse.

25           Q. But you're not aware of any national epidemic

1 or crisis?

2 MR. HYNES: Same objection.

3 A. I'm aware that various things are reported.  
4 I'm not privy to all of the facts of it.

5 Q. What about in 2007? Were you aware about the  
6 opioid crisis in 2007?

7 MR. HYNES: Same objection.

8 A. I don't recall.

9 Q. And what about between 2008 and 2012?

10 MR. HYNES: Same objection.

11 A. I don't recall.

12 Q. Did you know that hydrocodone and hydrocodone  
13 combination products were at the center of the opioid  
14 crisis?

15 MR. HYNES: Same objection.

16 A. No.

17 Q. Did you know that the Indianapolis DC had a  
18 role to play in preventing this epidemic?

19 MR. HYNES: Same objection.

20 A. CVS distribution center has a role to ship  
21 legitimate prescription needs to our legitimate stores  
22 for legitimate patients.

23 Q. And to prevent diversion, correct?

24 MR. HYNES: Same objection.

25 A. We want to make sure that those products go

1 in the correct channels.

2 (CVS-Millikan-101 was marked for  
3 identification.)

4 Q. Handing you what has been marked as Exhibit  
5 101.

6 Exhibit 101 is Bates stamped 15502 through  
7 15526.

8 Do you see that in the lower right-hand  
9 corner?

10 A. Yes.

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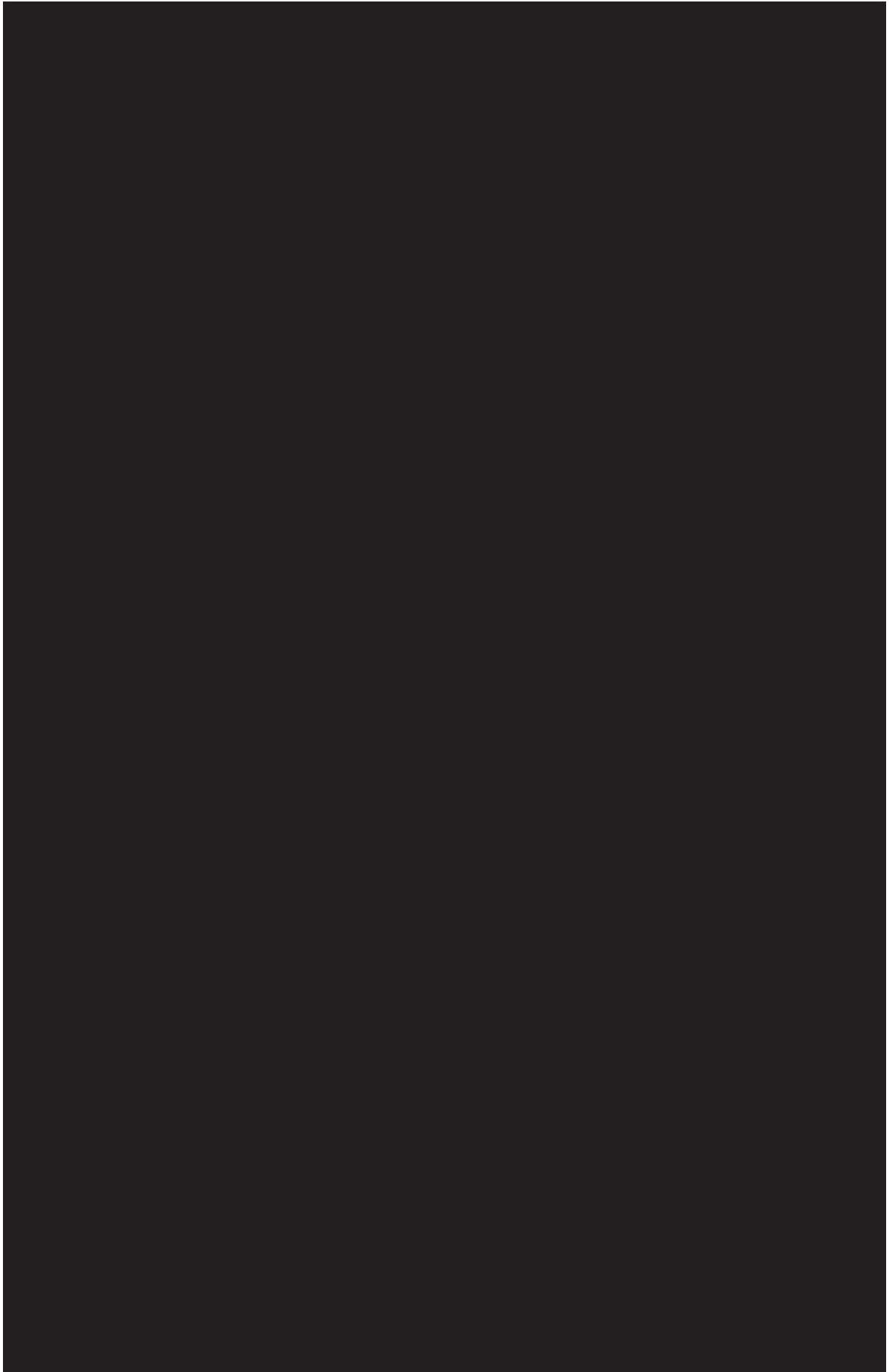


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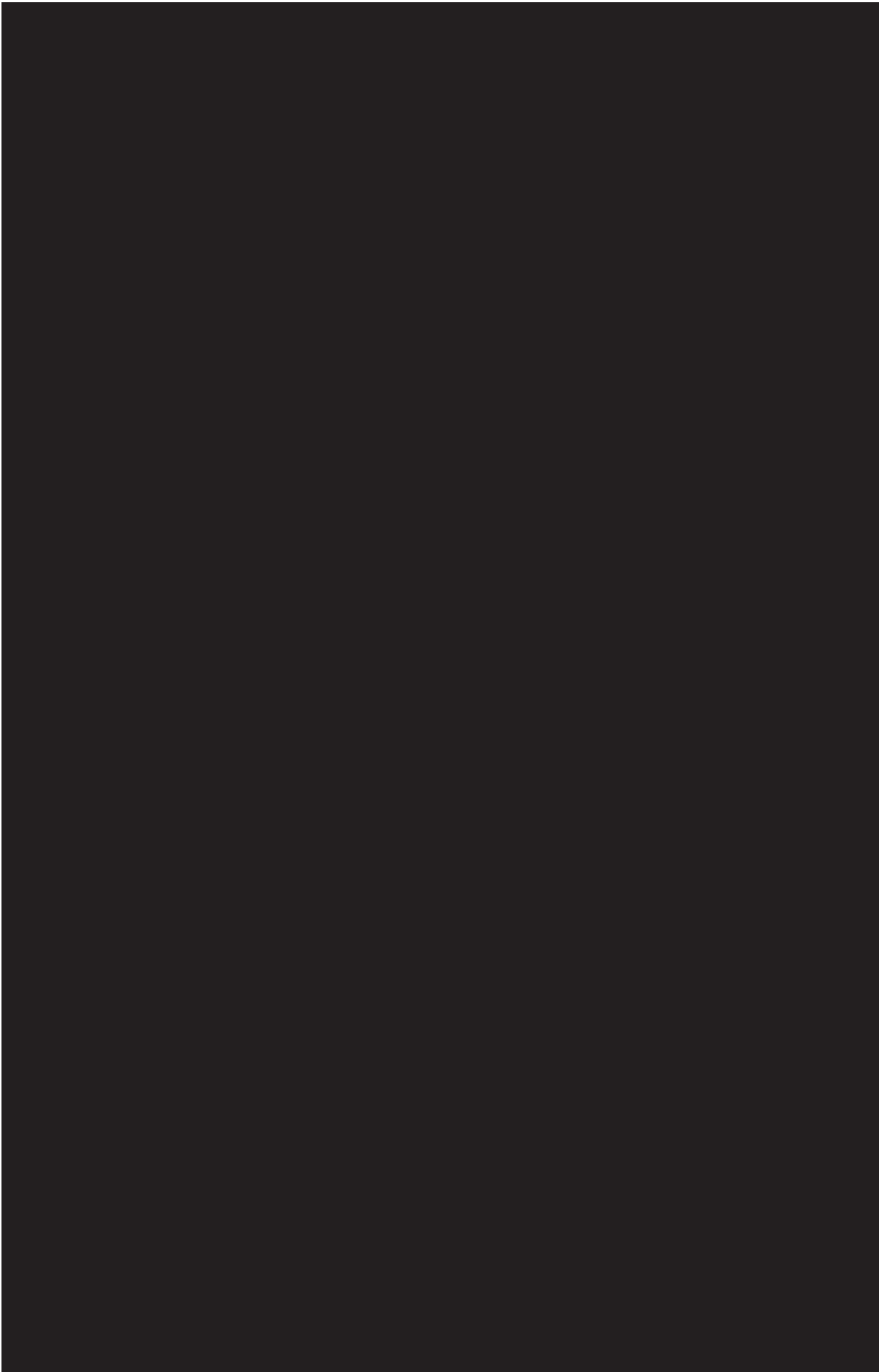
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(CVS-Millikan-102 was marked for

8

identification.)

9

Q. I'm going to hand you what has been marked as

10

Exhibit 102.

11

102 is not Bates stamped. Exhibit 102 is

12

called, "Poisoning Deaths, Opioid Analgesics,"

13

correct?

14

A. Yes.

15

Q. And it is a bar graph, correct?

16

A. Yes.

17

Q. And it is a bar graph showing poisoning

18

deaths from opioid analgesics, correct?

19

MR. HYNES: Objection to form.

20

A. That's what it says.

21

Q. Okay. And it is from 1999 through 2013?

22

A. Yes.

23

Q. And there is a steady increase in deaths from

24

1999 to 2013, correct?

25

MR. HYNES: Objection to form.

1 A. That's what it shows.

2 Q. And in 1999 there was 4,041 deaths from  
3 opioid analgesics, correct?

4 MR. HYNES: Objection to form.

5 A. That is what it alleges.

6 Q. And then it peaks out in 2011 at 16,917,  
7 correct?

8 MR. HYNES: Same objection.

9 A. Again, that's what it alleges.

10 Q. And then it tapers off at -- in 2013 at  
11 16,200, correct?

12 MR. HYNES: Same objection.

13 A. Again, that is what it alleges.

14 Q. Yeah. And the source of this is the  
15 CDC/NCHS, National Vital Statistics System --

16 MR. HYNES: Same objection.

17 Q. -- correct?

18 A. Yes.

19 Q. And the U.S. Drug Enforcement Administration,  
20 Office of Diversion Control published this document?

21 MR. HYNES: Same objection.

22 A. I'm not sure.

23 Q. It says --

24 A. I see where it says that, but I don't see  
25 where it says it published it, but...

1           Q. But do you see where it says U.S Drug  
2   Enforcement Administration, Office of Diversion  
3   Control in the lower right-hand corner?

4           A. Yes.

5           Q. Did you know about the information conveyed  
6   in Exhibit 102?

7           MR. HYNES: Objection to form.

8           A. I don't believe so.

9           (CVS-Millikan-103 was marked for  
10   identification.)

11          Q. Handing you what has been marked as Exhibit  
12   103.

13                 And this is the document that you referred to  
14   earlier and said you reviewed with your attorneys in  
15   preparation for this deposition, correct?

16           MR. HYNES: Objection. Don't answer the  
17   question.

18          Q. He already answered the question. Go ahead  
19   and answer it.

20           MR. HYNES: Don't answer it.

21          Q. Have you seen this document before?

22           MR. HYNES: Objection. Instruct the witness  
23   not to divulge anything that happened during prep  
24   session.

25          Q. Have you seen this document before?

1 A. I guess I can't answer.

2 Q. So, that's a yes?

3 MR. HYNES: Objection. Asked and answered.

4 Q. We are relying on your earlier testimony  
5 then.

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7 (CVS-Millikan-104 was marked for  
8 identification.)

9 Q. Handing you what has been marked as Exhibit  
10 104. Again, this document is not Bates stamped.

11 Exhibit 104 is dated 2012, Ohio Drug Overdose  
12 Deaths, correct?

13 A. Yes.

14 Q. Have you seen this document before?

15 MR. HYNES: Objection, to the extent this  
16 calls for the witness to divulge what he reviewed  
17 during prep.

18 Q. Have you seen this document before?

19 A. I don't believe so.

20 Q. The first sentence says, "Drug overdose  
21 deaths continue to be a public health crisis in Ohio  
22 with 366 percent increase in the number of deaths from  
23 2000 to 2012."

24 And then it cites to see Figure 1, correct?

25 A. Yes.

1 Q. I read that correctly?

2 A. Yes.

3 Q. And the source for that is the Ohio  
4 Department of Health, correct?

5 MR. HYNES: Objection to form.

6 A. Yes.

7 Q. The first bullet point says, "Unintentional  
8 drug overdoses caused 1,914 deaths to Ohio residents  
9 based on data in 2012. This is the highest number of  
10 deaths on record for drug overdose, and surpasses the  
11 previous highest number (1,765) in 2011, by 8.4  
12 percent."

13 Did I read that correctly?

14 A. Yes.

15 Q. And then the next bullet point says, "In  
16 2012, five Ohioans died every day from unintentional  
17 drug overdose, or one every five hours," correct?

18 MR. HYNES: Objection to form.

19 A. That's what it says.

20 Q. And the next bullet point says,  
21 "Unintentional drug overdose continues to be the  
22 leading cause of injury related deaths in Ohio, ahead  
23 of motor vehicle traffic crashes, suicide and falls.  
24 This trend began in 2007 and continues through 2012."

25 Did I read that correctly?

1 A. Yes.

2 Q. And then the next sentence says, "Opioids  
3 (prescription or heroin) remain the driving factor  
4 behind the unintentional drug overdose epidemic in  
5 Ohio. Approximately two-thirds (1,272; 66.5 percent)  
6 of the drug overdoses involved any opioid in 2012,  
7 similar to 2011 (1,154; 65 percent)."

8 Did I read that correctly?

9 A. Yes.

10 Q. Did you know about the information conveyed  
11 in Exhibit 104?

12 MR. HYNES: Objection. Time period.

13 Q. Before today.

14 A. I'm not sure.

15 Q. You have no idea?

16 A. I'm not sure if I knew or not.

17 Q. Did anybody from CVS tell you about the  
18 information conveyed in Exhibit 104?

19 A. I'm not sure if they have or not.

20 (CVS-Millikan-105 was marked for  
21 identification.)

22 Q. Handing you what has been marked as  
23 Exhibit 105. This is also not Bates stamped.

24 Exhibit 105 is titled, International  
25 Narcotics Control Board Comments on Reported

1 Statistics on Narcotic Drugs-2012, correct?

2 A. Yes.

3 Q. Have you seen Exhibit 105 before?

4 MR. HYNES: Objection and instruct the client  
5 not to answer with respect to what he reviewed during  
6 prep.

7 He can answer with respect to whether he's  
8 reviewed this document outside of his prep session.

9 Go ahead.

10 A. I don't believe so.

11 Q. The first entry says: U.S. was the country  
12 with the highest consumption of hydrocodone  
13 (approximately 45.5 tons, or 99 percent, of global  
14 consumption).

15 Did I read that correctly?

16 A. Yes.

17 Q. Were you aware of this?

18 A. No.

19 Q. After reviewing Exhibits 101 through 105,  
20 does this change your opinion that there was an opioid  
21 epidemic between 2006 and 2013 in the United States?

22 MR. HYNES: Objection to form.

23 A. No, I can't comment on that wording based on  
24 these documents without looking into it more.

25 Q. If you had known the information in

1 Exhibits 101 through 105, and that there was an opioid  
2 crisis in the U.S., would you have done your job  
3 differently?

4 MR. HYNES: Objection to form. Lack of  
5 foundation.

6 A. No. We had a duty to make sure that  
7 legitimate prescriptions went to legitimate stores for  
8 legitimate patients. So despite anything, we would  
9 make sure that we were following the correct.

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23 (CVS-Millikan-106 was marked for  
24 identification.)

25 Q. I'm going to hand you what has been marked as

1 Exhibit 106.

2 106 is Bates stamped 91508 through 91518,  
3 correct?

4 A. Yes.

5 Q. Have you seen Exhibit 106 before?

6 MR. HYNES: Objection to the extent it calls  
7 for the client, the witness, to divulge documents  
8 reviewed during prep. I instruct the witness to only  
9 answer as to what he's reviewed outside of his prep  
10 session.

11 MR. GOETZ: What is the grounds for that? I  
12 mean, is -- is there a -- are you referencing a case  
13 management order? I'm curious.

14 MR. HYNES: No, no. I just -- I don't  
15 think -- what we discussed during his prep session, I  
16 think that's privileged.

17 MR. GOETZ: You're not asking what you  
18 discussed. You're asking if he saw that document.

19 MR. HYNES: But I think documents I choose to  
20 show him, I think that's privileged.

21 MR. GOETZ: We're not asking him: What  
22 documents did the lawyer choose to show you?

23 MR. HYNES: He's asking --

24 MR. GOETZ: Asking: Did you see this  
25 document? It's a different question than,

1 Mr. Millikan, what documents did Mr. Hynes choose to  
2 show you during the prep?

3 MR. HYNES: But -- but if the answer is, I  
4 saw this during prep --

5 MR. GOETZ: Totally different question.

6 MR. HYNES: But if his answer is, I saw this  
7 during prep, that's, to me, privileged.

8 Do you agree?

9 MR. GOETZ: Those are the documents -- no, I  
10 don't because those are the documents we chose to use.

11 It's a different question than, what  
12 documents did Mr. Hynes show you?

13 If we have a document that we choose to use,  
14 we have a right to know if he saw them before he  
15 walked in here.

16 MR. ROOF: And Eric allowed that yesterday.

17 MR. GOETZ: I mean, it just -- and I'm just  
18 curious. I -- I -- I wanted to know if you're looking  
19 at a CMO because there was --

20 MR. HYNES: It's not a CMO.

21 MR. GOETZ: -- as to what -- as to whether  
22 you had to identify everything you showed to your  
23 witnesses. There was that issue. And what it was  
24 resolved at, no, but everything he used for prep has  
25 to have been produced.



1 MR. HYNES: That was for 30(b) .

2 MR. GOETZ: Okay. I -- I --

3 MR. HYNES: And that's for 30(b), not  
4 everything -- but, listen, I'll -- I'll give it some  
5 thought. This is what I've always done in  
6 depositions, and I've never had a problem with it.

7 Miles and I will talk about it at the  
8 break.

9 MR. GOETZ: Okay. Fair enough.

10 MR. HYNES: Okay.

11 MR. ROOF: Okay. So, my question --

12 MR. HYNES: Do you want to ask the question  
13 again and I'll just say --

14 MR. ROOF: Yeah.

15 MR. HYNES: -- "same objection"?

16 BY MR. ROOF:

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15 Q. You've never seen or read 21 USC 823(e)?

16 A. I don't know that. This is 12 years ago.  
17 I've basically been retired for six years. I can't  
18 quote that code.

19 Q. My question is: Have you seen that code  
20 before?

21 A. I believe so.

22 Q. Okay. As part of your job?

23 A. Or as a student.

24 Q. You can't recall which one?

25 A. No.

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MR. HYNES: Can we would take a two-minute  
break? We've just been going for a while.

MR. ROOF: Sure. Absolutely.

THE VIDEOGRAPHER: Off the record at  
11:35 a.m.

(There was a brief recess.)

THE VIDEOGRAPHER: We are back on the record  
at 11:52 a.m.

BY MR. ROOF:



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[REDACTED]

(CVS-Millikan-111 was marked for  
identification.)

[REDACTED]

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22 (CVS-Millikan-112 was marked for  
23 identification.)

24 Q. Handing you what has been marked as  
25 Exhibit 112.

1 Back up.

2 Have you seen Exhibit 111 before?

3 MR. HYNES: Same objection as to documents

4 reviewed during prep session.

5 A. Yes.

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MR. GOETZ: Do you want to break for lunch  
now?

MR. HYNES: We might as well.

THE VIDEOGRAPHER: We are off the record at  
12:03 p.m.

(There was a luncheon break.)

THE VIDEOGRAPHER: We are back on record at  
12:55 p.m.

BY MR. GOETZ:

Q. Mr. Millikan, my name is Dan Goetz. We met  
earlier.

(CVS-Millikan-9 was marked for  
identification.)

1 I'm going to hand you what has been marked as  
2 Millikan Exhibit 9.

3 Do you recognize that document, sir?

4 A. Yes.

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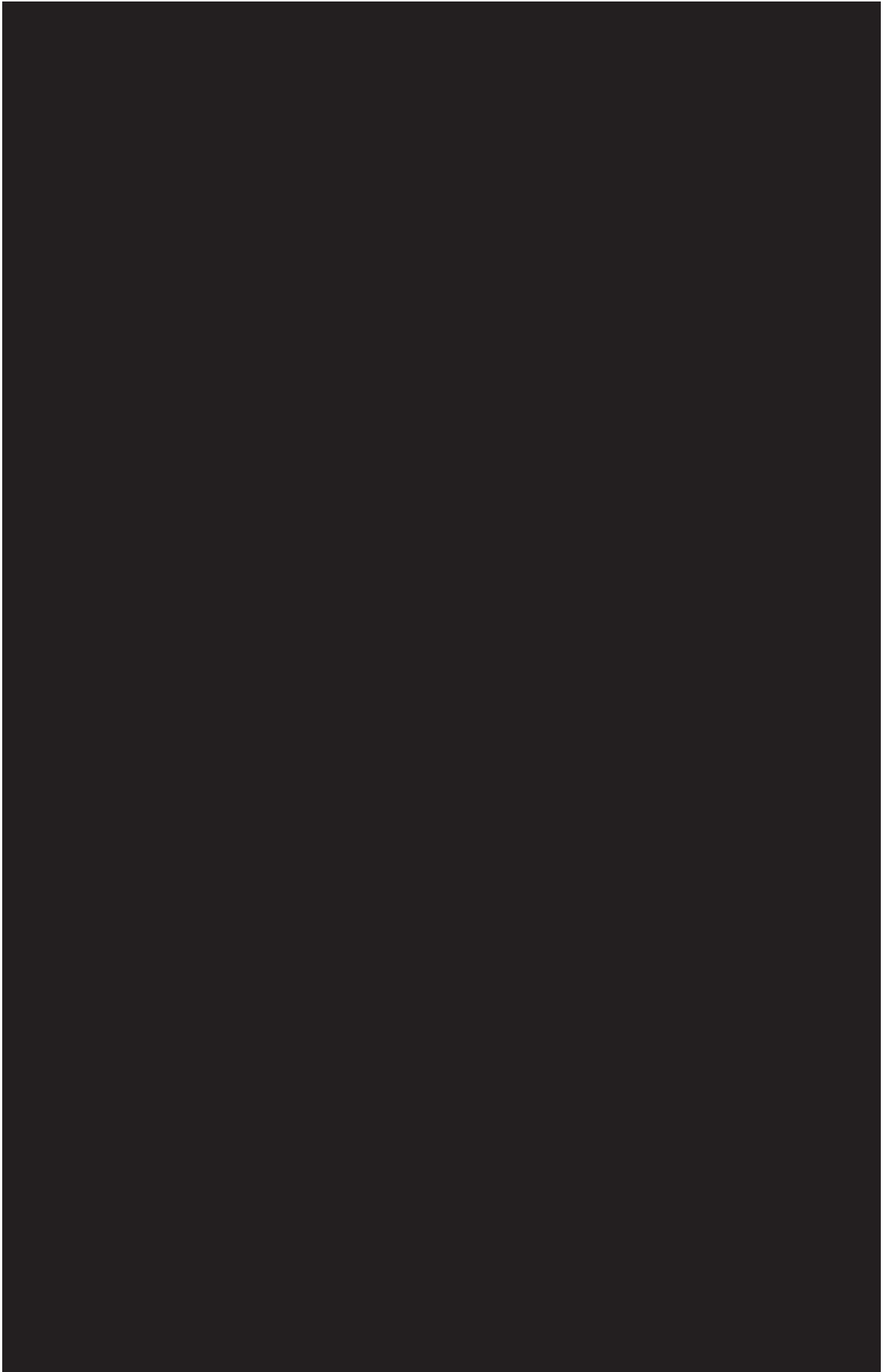
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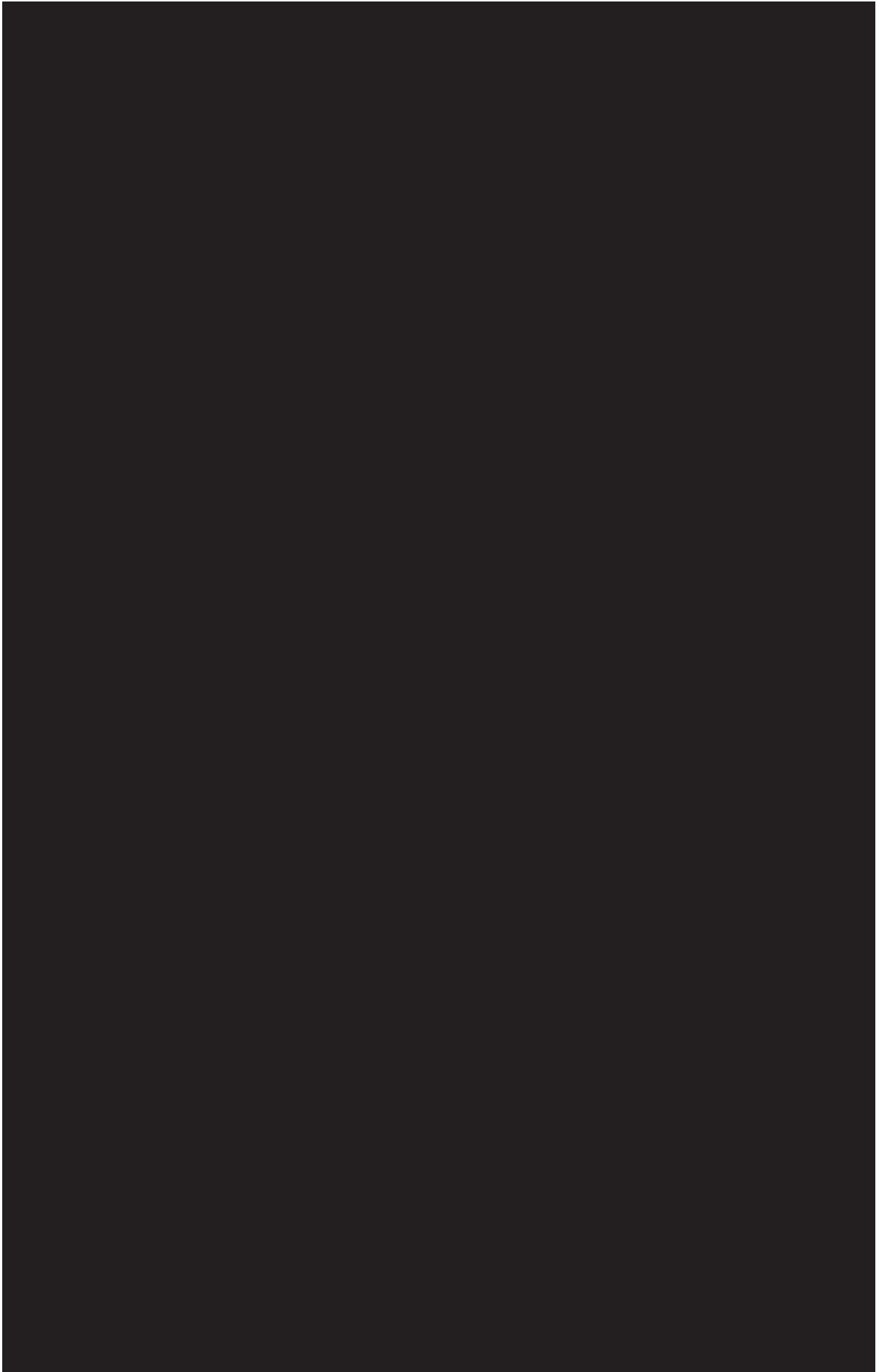
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MR. GOETZ: Off the record.

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THE VIDEOGRAPHER: We're off the record at

4

1:27 p.m.

5

(There was a brief recess.)

6

THE VIDEOGRAPHER: We're back on the record

7

at 1:28 p.m.

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(CVS-Millikan-48 was marked for

9

identification.)

10

BY MR. GOETZ:

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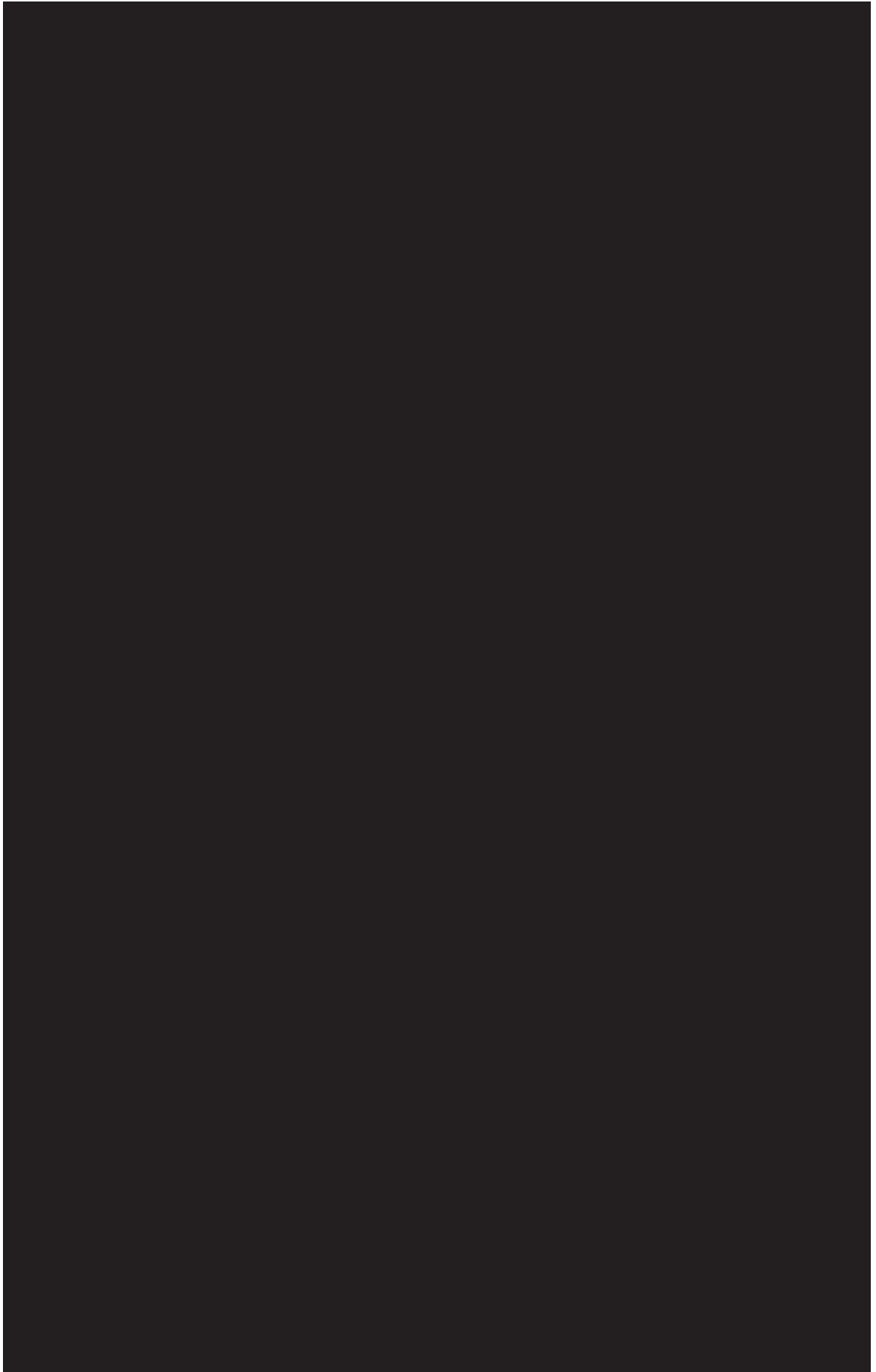
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17 MR. GOETZ: Do you want to take a break or  
18 keep going?

19 Mr. Millikan, would you like a short break or  
20 would you like to keep going?

21 THE WITNESS: Whatever you want to do is fine  
22 with me.

23 THE VIDEOGRAPHER: We are off record at  
24 1:46 p.m.

25 (There was a brief recess.)

1 THE VIDEOGRAPHER: We are back on record at  
2 2:00 p.m.  
3 BY MR. GOETZ:

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2 (CVS-Millikan-36 was marked for  
3 identification.)

4 Q. I'm going to hand you Exhibit 36.

5 I just want to find out if these are the  
6 instructions you're speaking about.

7 A. Oh, sorry.

8 These are not the instructions I'm referring  
9 to.

10 Q. Oh. Have you -- and you can object -- have  
11 you seen the instructions during your prep?

12 MR. HYNES: Let me -- I'm going to object and  
13 tell him not to answer.

14 We've produced the instructions if that's  
15 what you're getting at.

16 MR. GOETZ: I -- I would like for you to  
17 identify. We --

18 MR. HYNES: Okay.

19 MR. GOETZ: I have no idea where they --

20 MR. HYNES: Yeah, I can identify. It's not a  
21 problem. I can't do it, like, right now, but...

22 BY MR. GOETZ:

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14 Q. Mr. Millikan, you spent 35 years in a  
15 distribution center distributing controlled drugs,  
16 correct?

17 A. No.

18 Q. How long?

19 A. '95 to 2012.

20 Q. Seventeen years?

21 A. Yes.

22 Q. Okay. You spent 17 years in a distribution  
23 center distributing controlled substances.

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18           Q.   And where is the analyst -- did you say the  
19 analyst office?

20           A.   Yes.

21           Q.   Where was that at the Indianapolis  
22 distribution center?

23           A.   Near the southeast end of the building.

24           Q.   Where was the pharmacy office?

25           A.   Near the northeast end of the building.

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1 Review Report as potentially suspicious as identified  
2 by the computer algorithm model?

3 A. Yes.

4 Q. When that order was on there, would you  
5 automatically look at additional information that was  
6 not shown on that Item Review Report?

7 A. No.

8 Q. No.

9 So, there were oftentimes, and that's where  
10 we started, and I apologize.

11 A. Oh, yes.

12 Q. So when I said to you, Mr. Burtner, according  
13 to those notes, looks at additional information not  
14 shown on the Item Review Report two to three times,  
15 per hundred orders -- and we have been going through  
16 those control studies to show you when he looks at an  
17 IRR, how often he would look at additional due  
18 diligence.

19 How often would you do additional due  
20 diligence that was not reflected on the Item Review  
21 Report for an order that was flagged? What  
22 percentage?

23 MR. HYNES: Object to form.

24 Go ahead.

25 A. I don't remember the percent, but it would

1 not be a large percent.

2 Q. And so, under five?

3 MR. HYNES: Objection to form.

4 Go ahead.

5 Under 5 percent or under five --

6 MR. GOETZ: Under 5 percent.

7 THE WITNESS: Five percent.

8 MR. GOETZ: Under 5 percent.

9 MR. HYNES: Objection to form.

10 BY MR. GOETZ:

11 Q. Under 5 percent?

12 A. I don't know, but, yes, probably.

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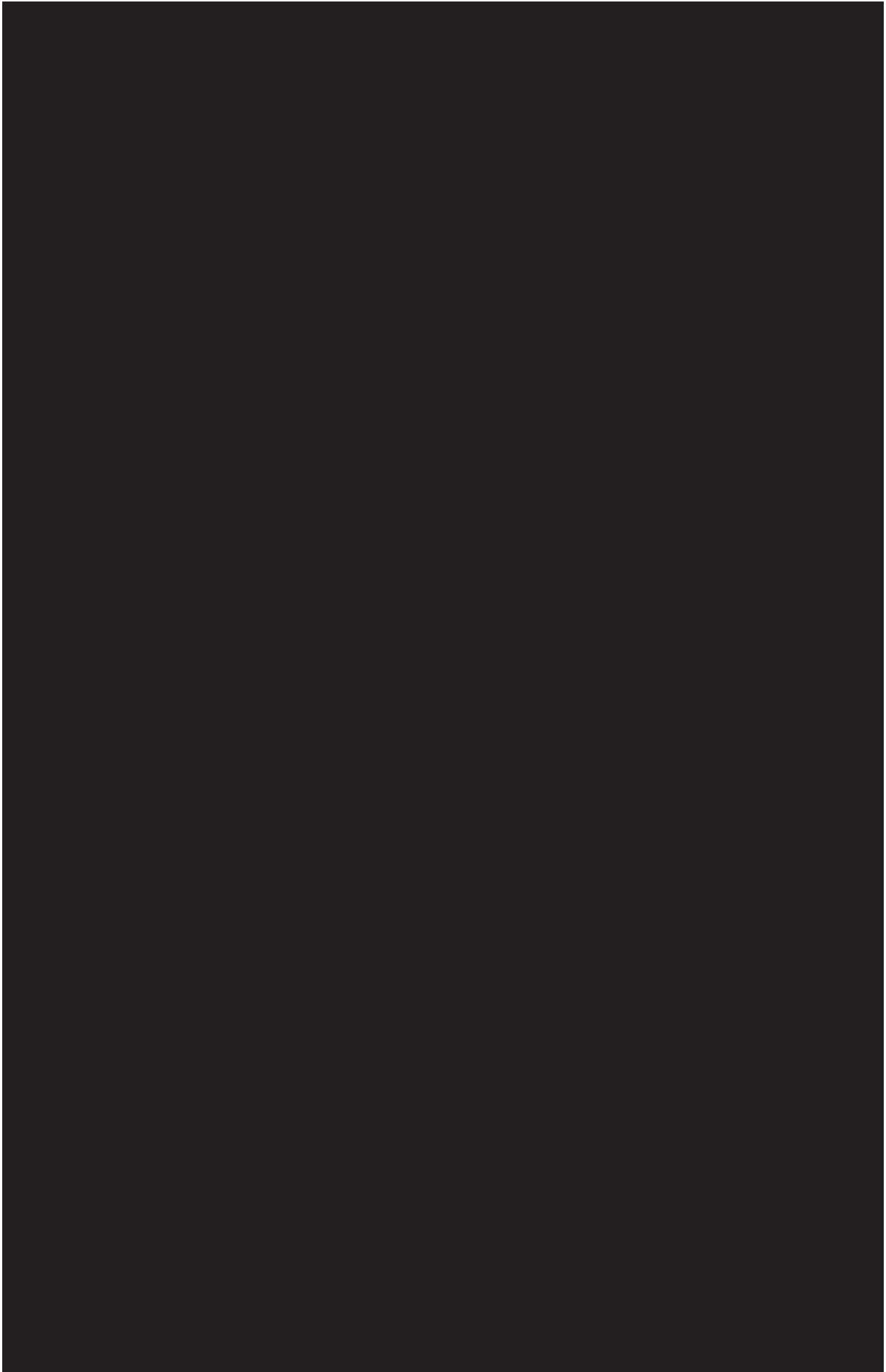


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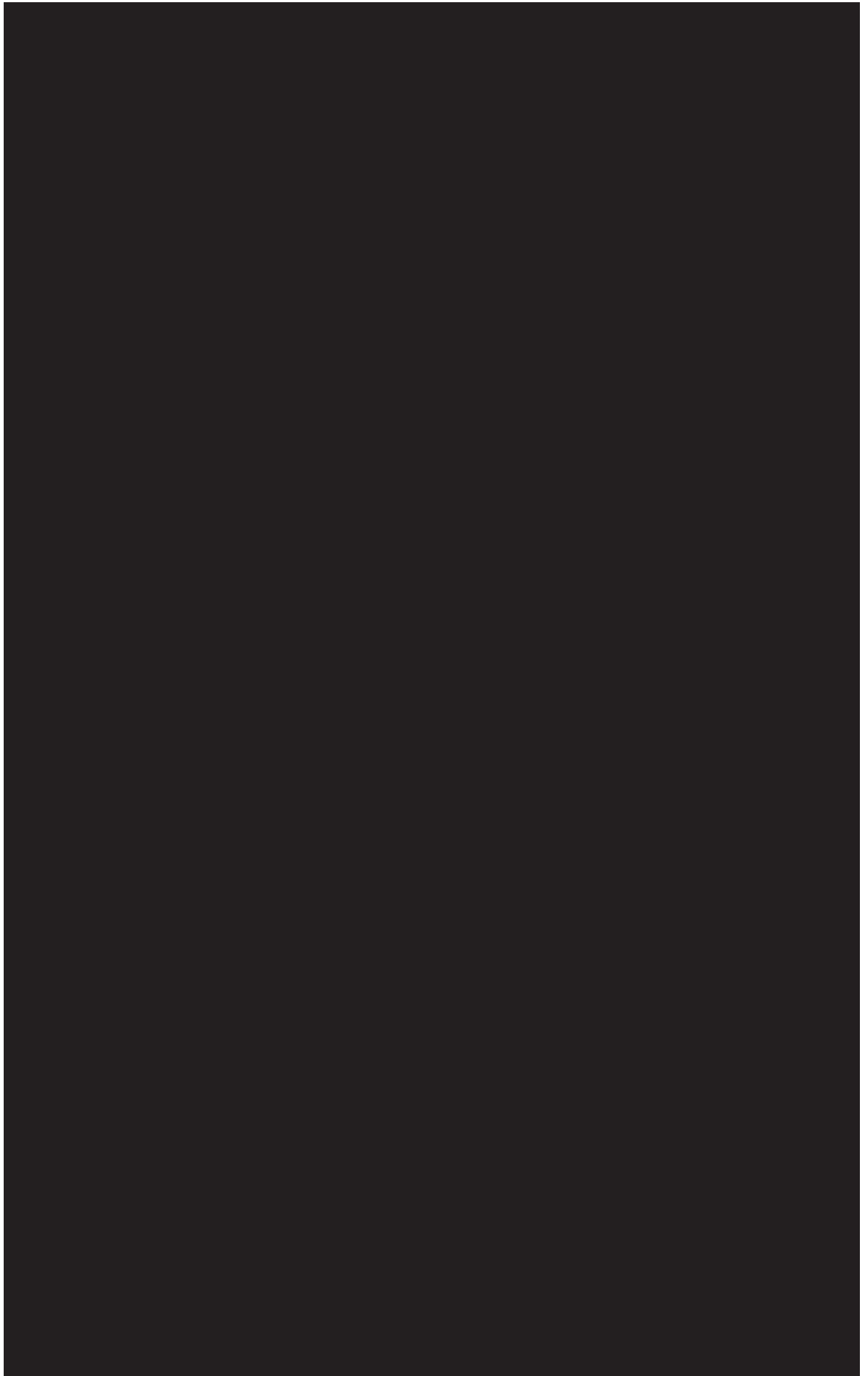
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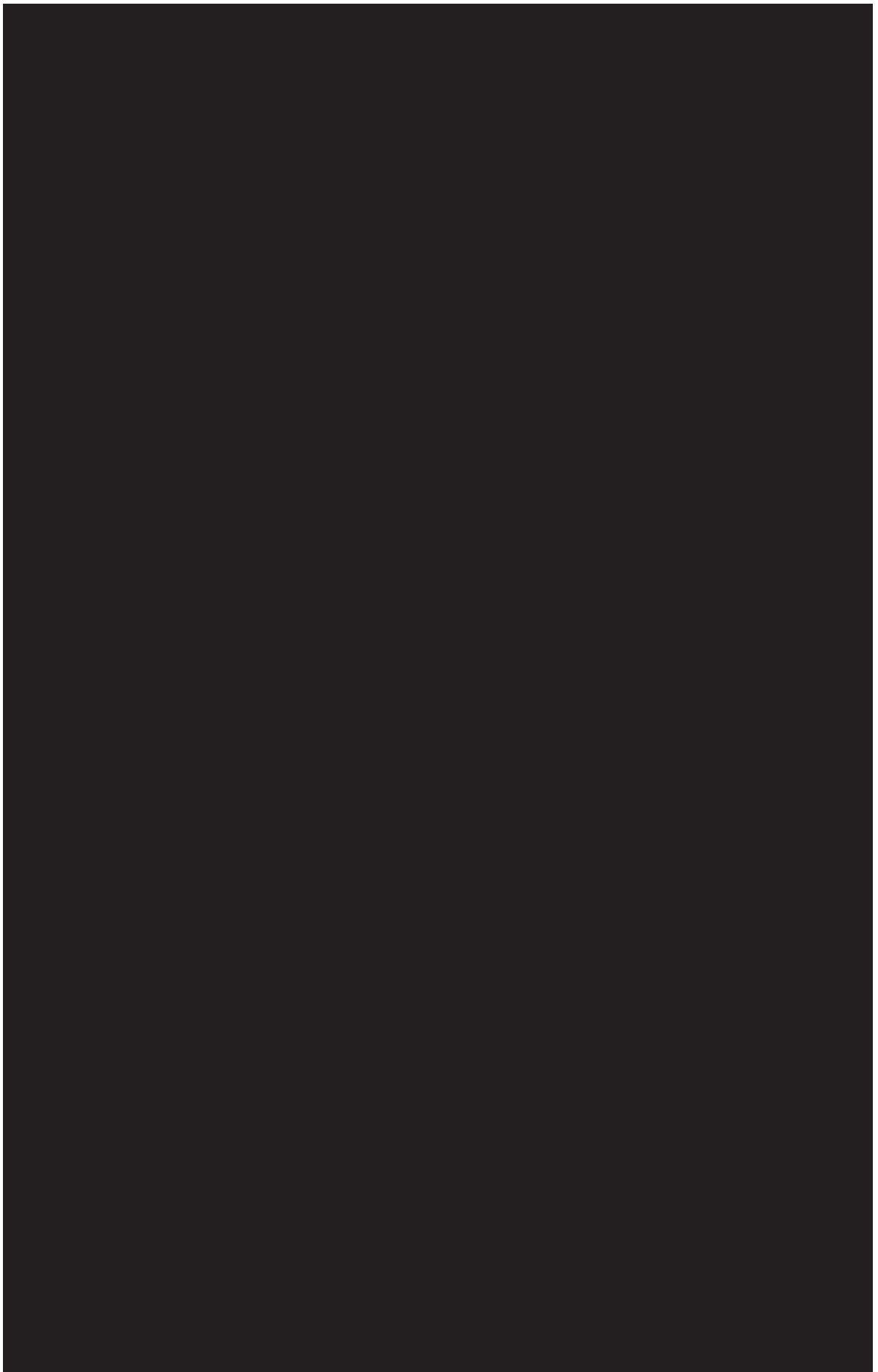
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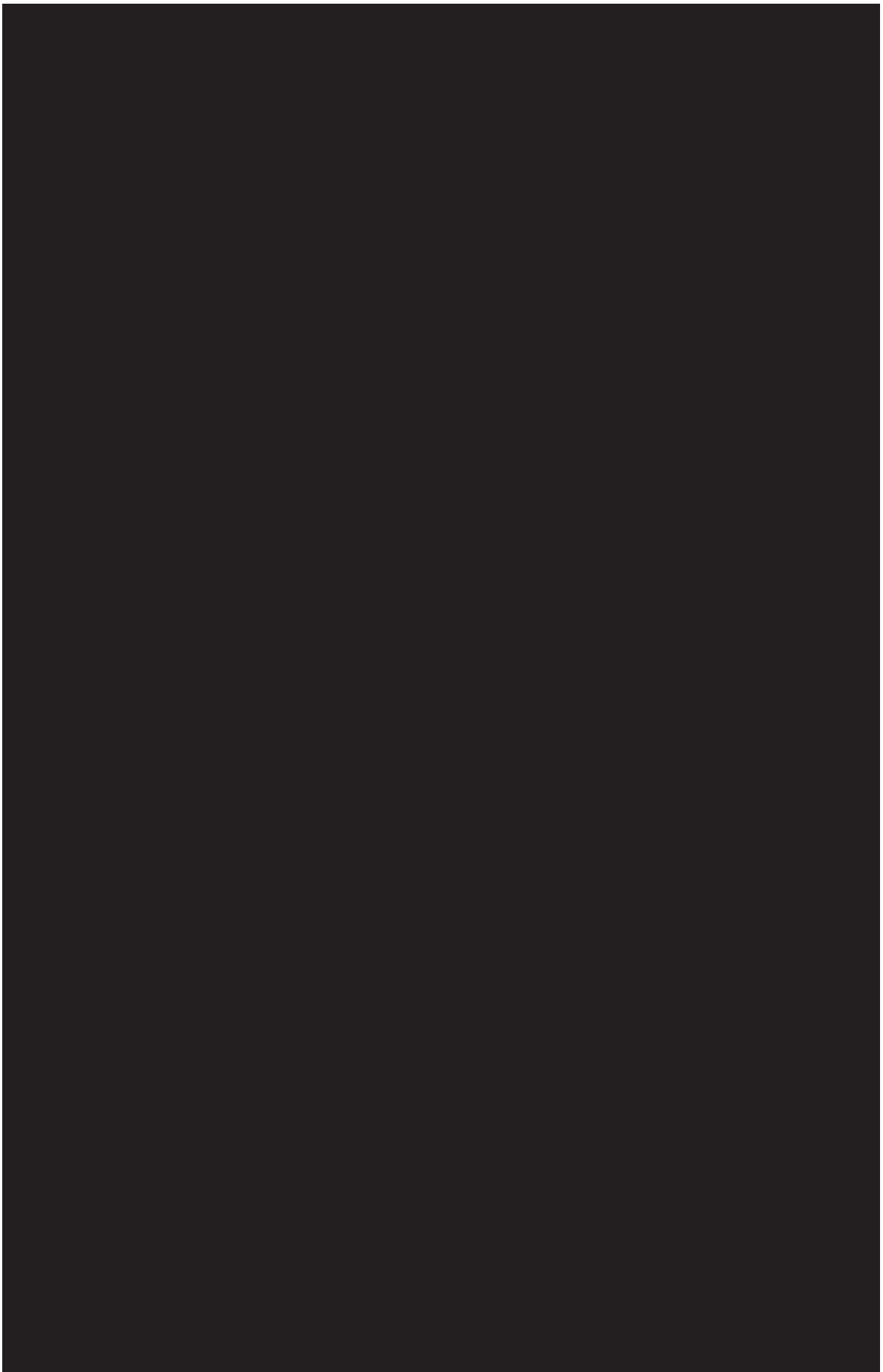
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(CVS-Millikan-37 was marked for  
identification.)

(CVS-Millikan-38 was marked for  
identification.)

Q. I'm going to show you what has been marked as  
Plaintiff's Exhibit 37 and Plaintiff's Exhibit 38.

Here's 37 and 38.

MR. HYNES: We're short a copy on 38.

MR. GOETZ: I -- I apologize.

Do you have a 38 for you?

MR. HYNES: I do.

MR. GOETZ: And does the witness have a 38?

THE WITNESS: Yes.

MR. GOETZ: Okay.

BY MR. GOETZ:

1 Q. Exhibit 37, do you see that?

2 A. Yes.

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12 Q. And it's to Dan Deaton.

13 Who's Dan Deaton?

14 A. He would have been a pharmacy supervisor  
15 probably at that time.

16 Q. And who's [REDACTED]

17 A. The pharmacy manager at that time.

18 Q. And who's Joseph Shohl?

19 A. Was probably the logistics manager -- or I'm  
20 sorry -- the loss prevention manager.

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10 Q. I will represent to you that from a period of  
11 2-6 of 2013 to December 30th of 2013 -- strike that.

12 Mr. Millikan, I'm handing you what has been  
13 marked as Exhibit 13. You're going to want to keep  
14 that. It doesn't matter.

15 A. Oh.

16 Q. That is a list of what says, Track One CVS  
17 Store Information.

18 Do you see that?

19 A. Yes.

20 Q. All right. Do you understand that the first  
21 opioid litigation case involves the County of  
22 Cuyahoga?

23 A. I don't know that it's the first.

24 Q. Okay. Do you understand that the County of  
25 Cuyahoga, the City of Cleveland, the County of Summit,

1 and the City of Akron are joined together in one  
2 lawsuit to be tried together?

3 A. Yes, I believe so.

4 Q. Okay. I will represent to you they are the  
5 first case that are scheduled to be tried.

6 A. Okay.

7 (CVS-Millikan-33 was marked for  
8 identification.)

9 Q. These stores that you see on Exhibit 33,  
10 they, according to what has been produced by CVS,  
11 represent those stores that are part of what we're  
12 calling track one, because that's the first case to be  
13 tried.

14 Do you see up top: Track One CVS Store  
15 Information?

16 A. Yes.

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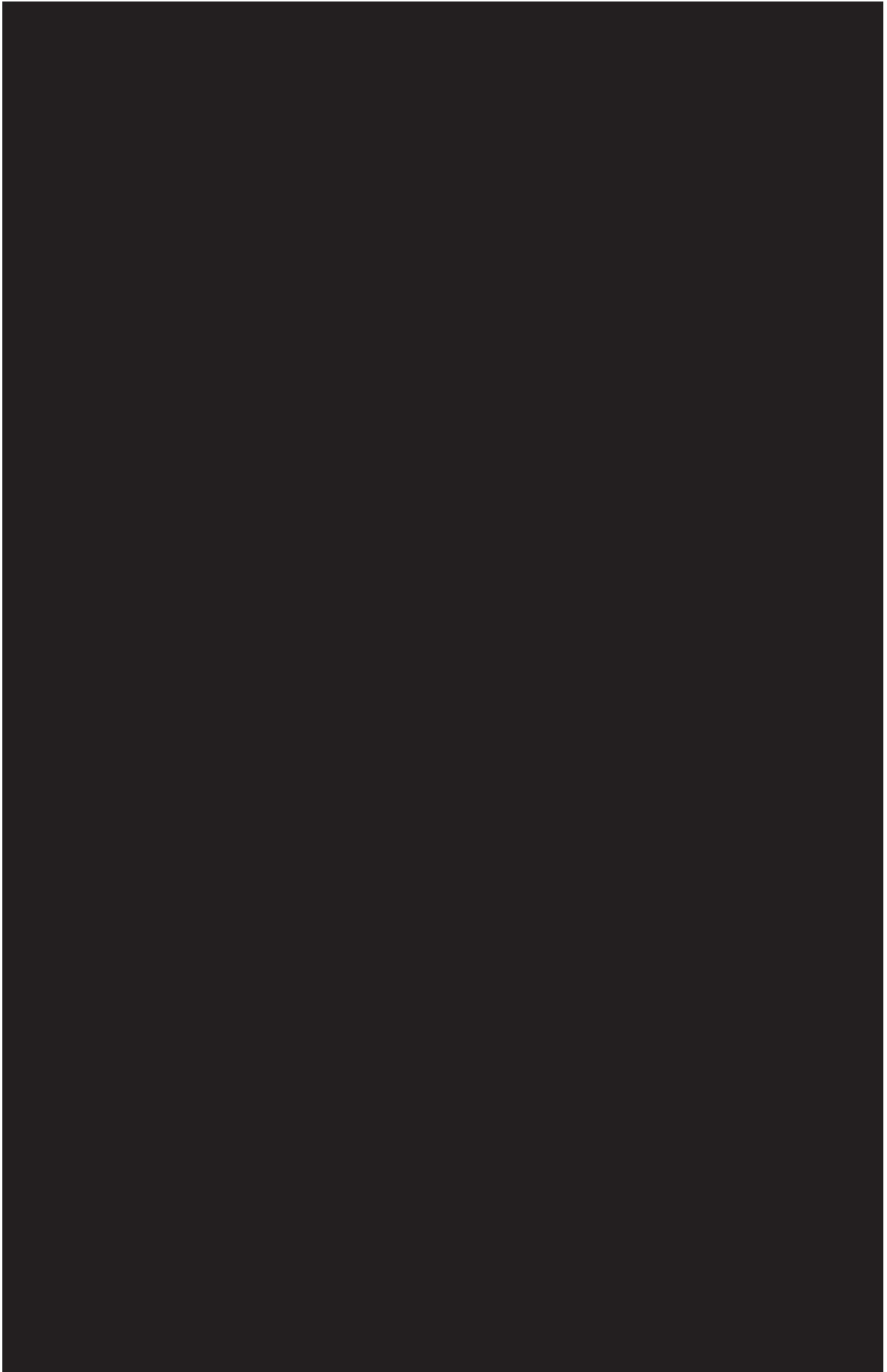
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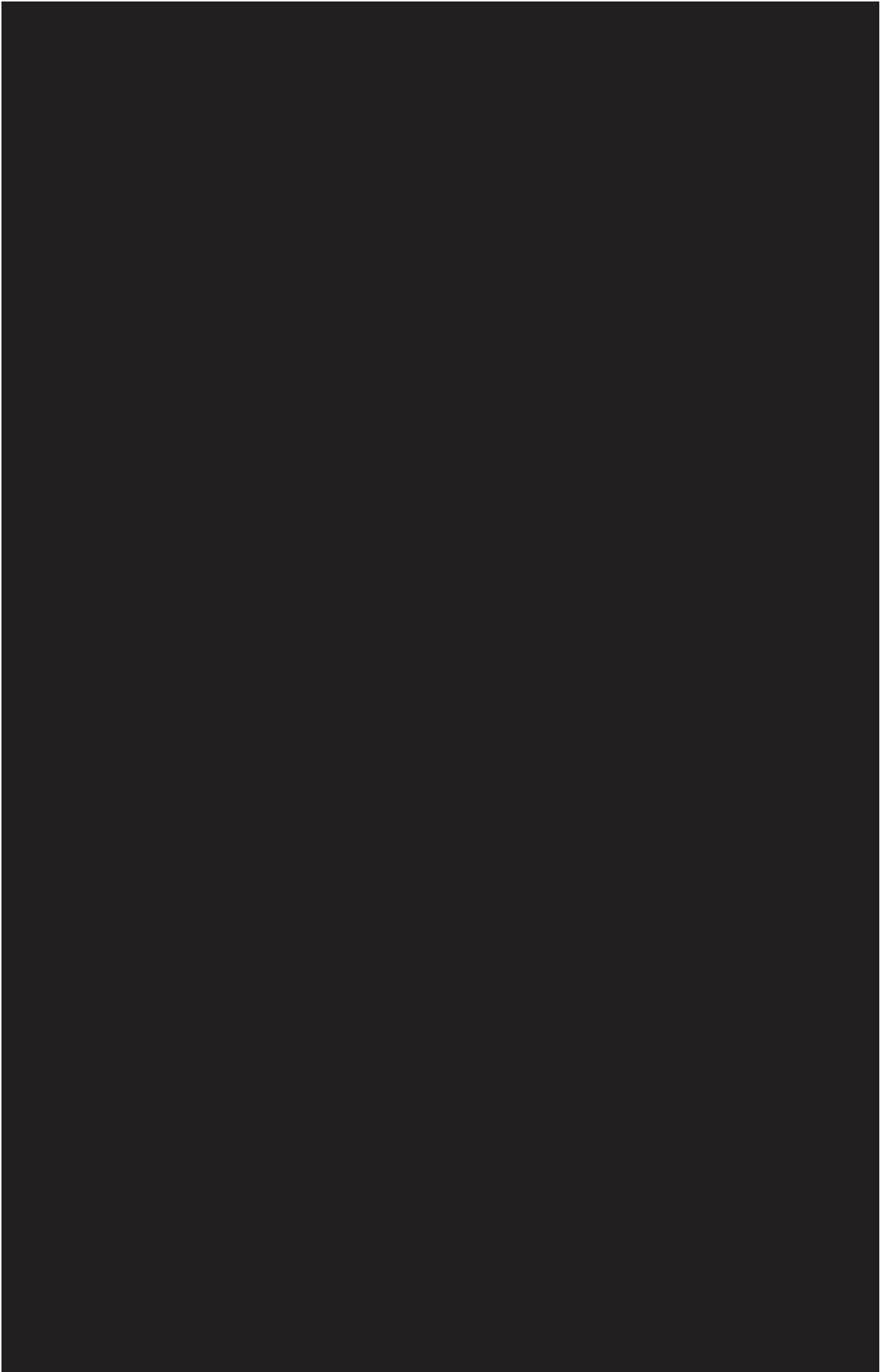
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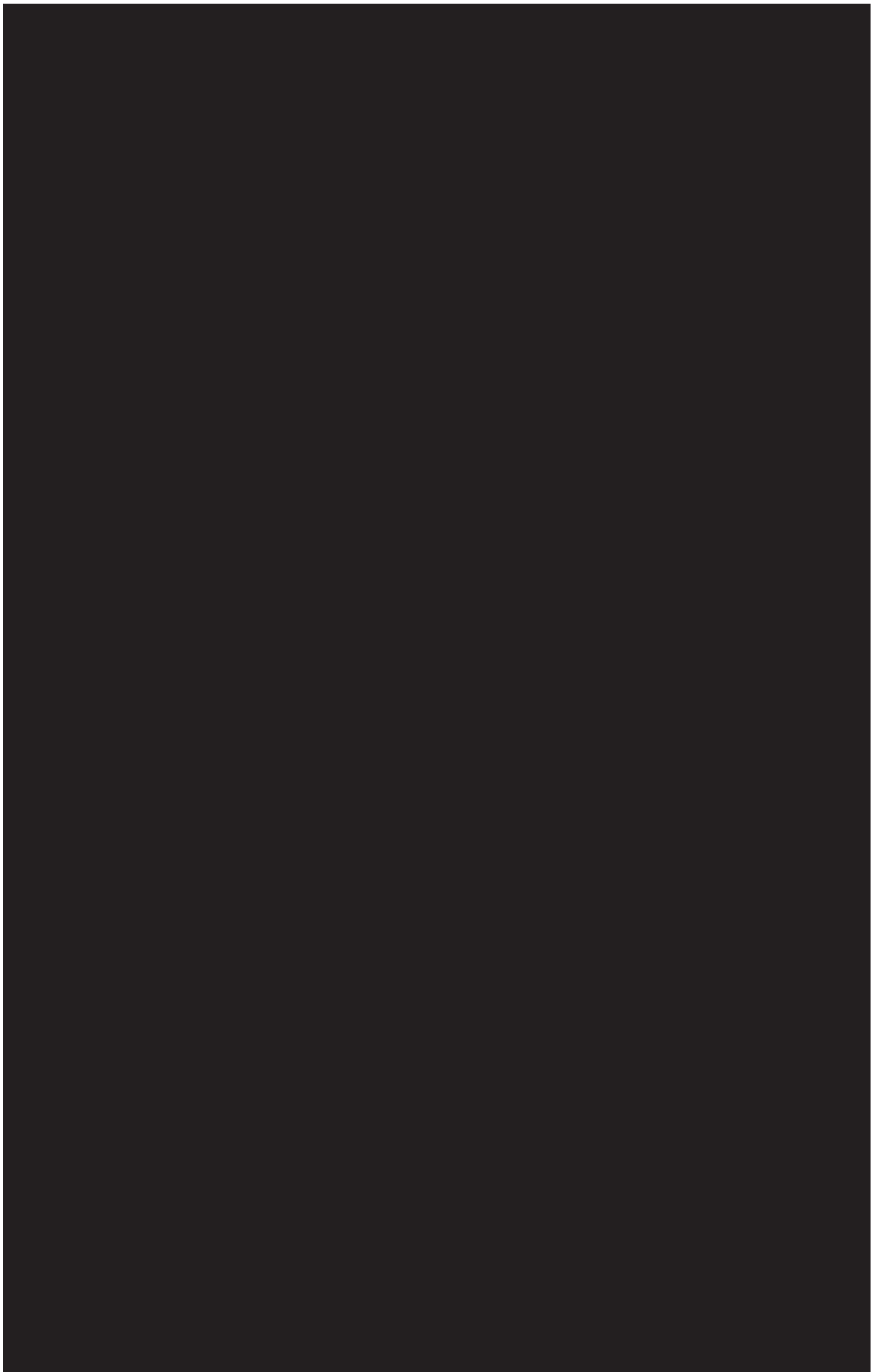
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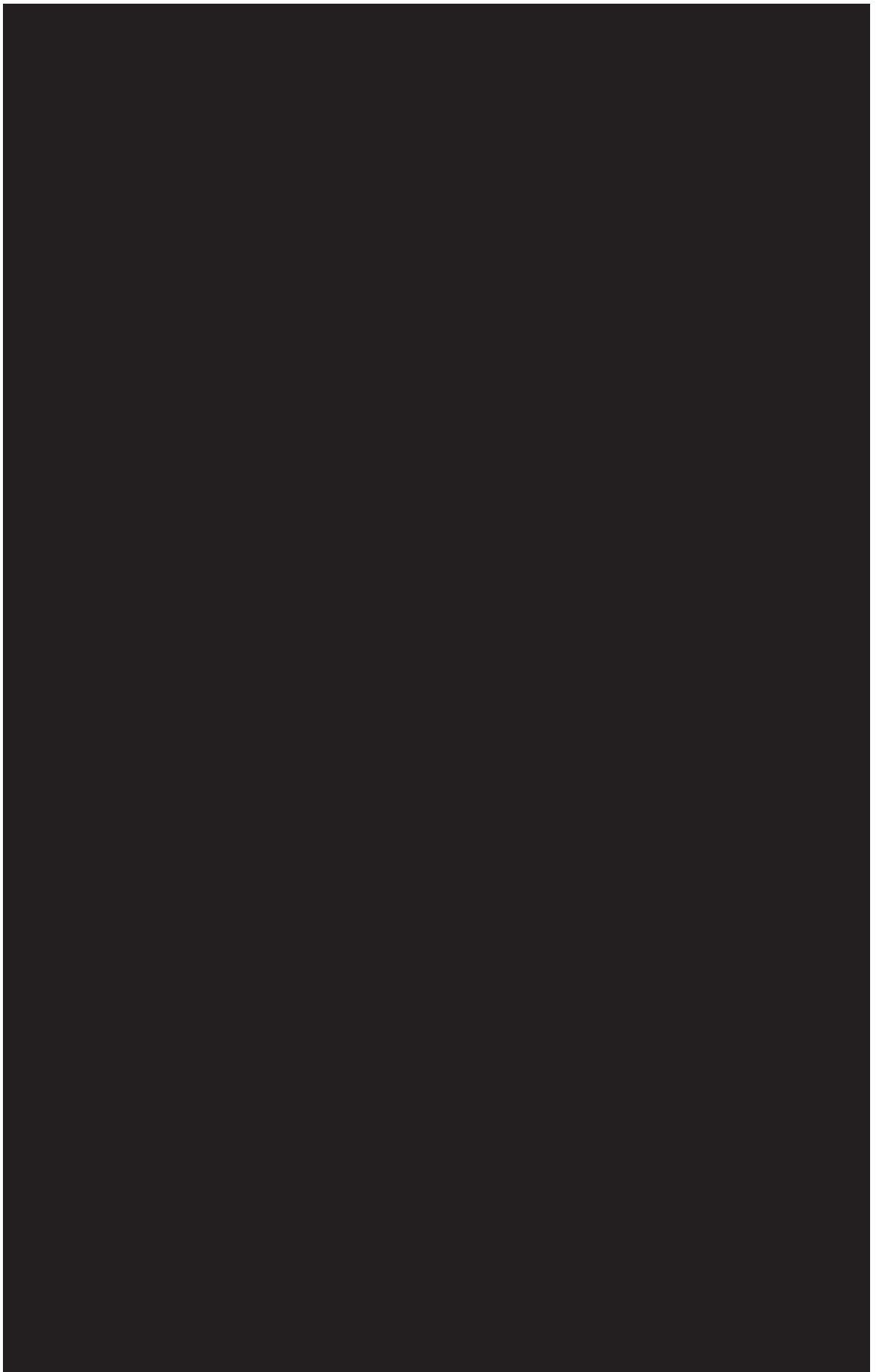




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15 MR. GOETZ: Let's take a break.

16 THE VIDEOGRAPHER: We are off record at

17 4:36 p.m.

18 (There was a brief recess.)

19 THE VIDEOGRAPHER: We are back on the record

20 at 4:49 p.m.

21 MR. GOETZ: Mr. Millikan, I don't have any

22 further questions for you, pending what Mr. Hynes asks

23 you.

24 THE WITNESS: Okay. Thank you.

25 MR. GOETZ: And thank you for your time

1     today.

2                   THE WITNESS:   Thank you.

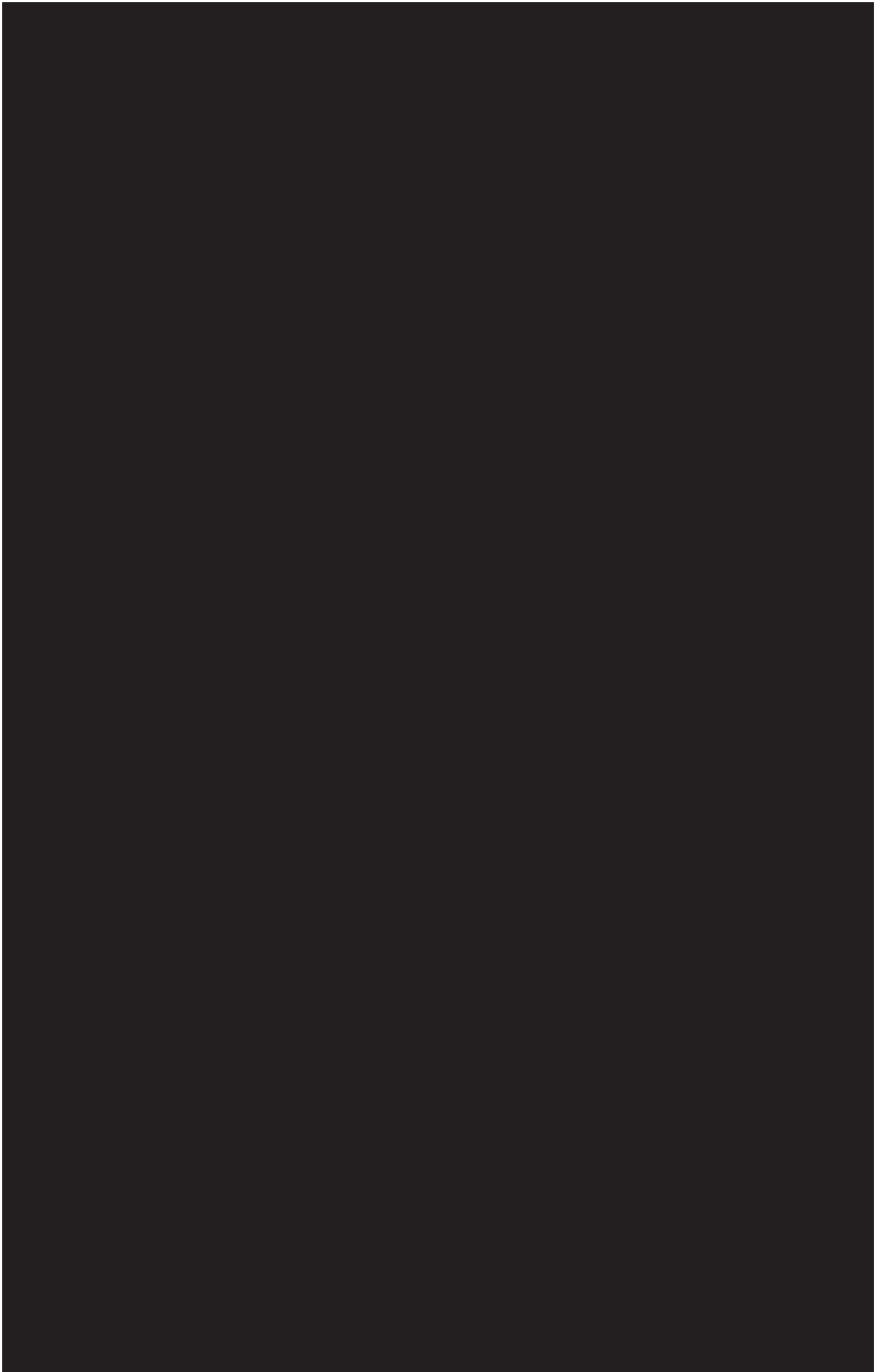
3                   EXAMINATION

4     BY MR. HYNES:

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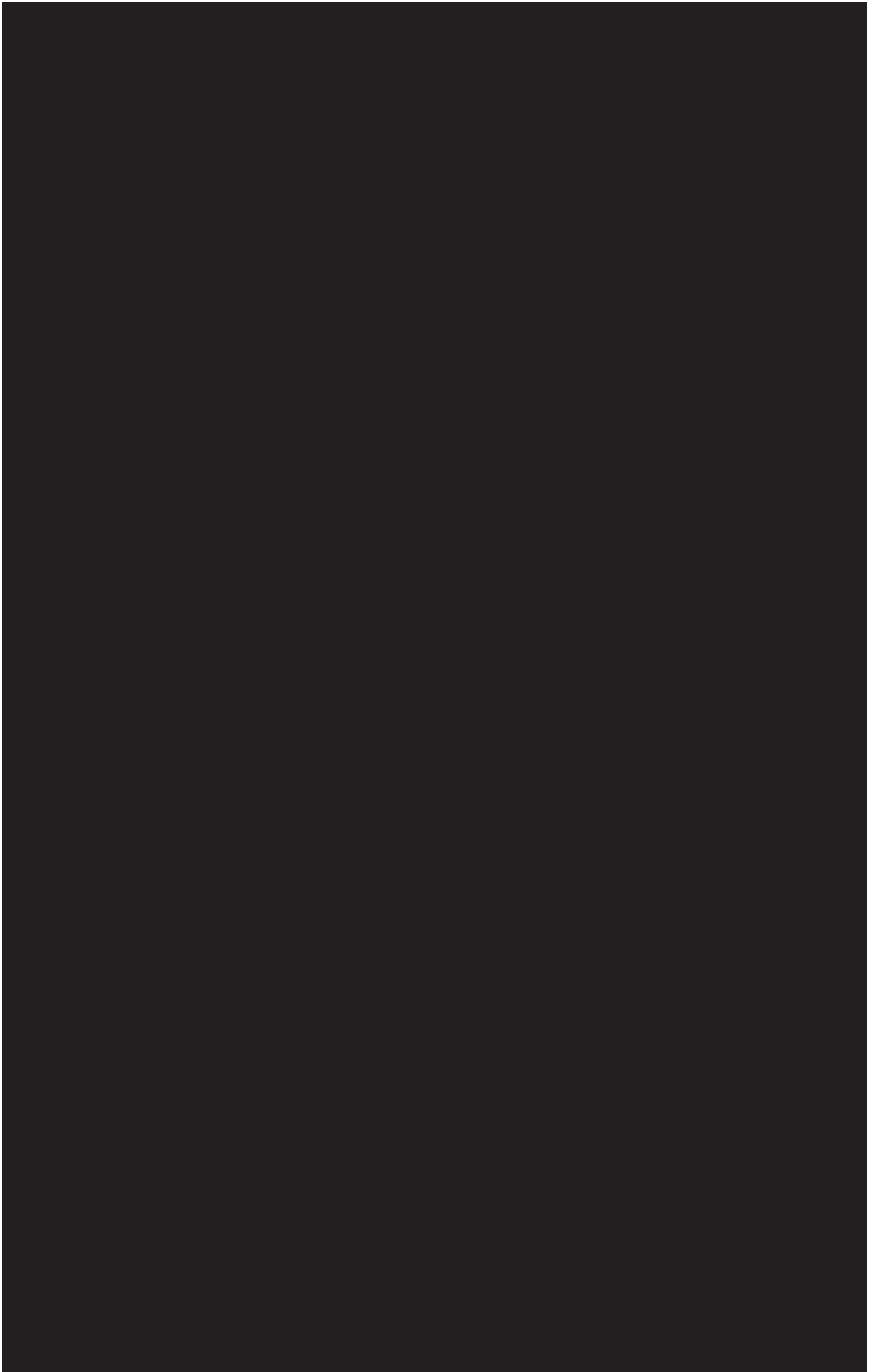
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Q. Okay.

MR. HYNES: No further questions.

RE-EXAMINATION

BY MR. GOETZ:



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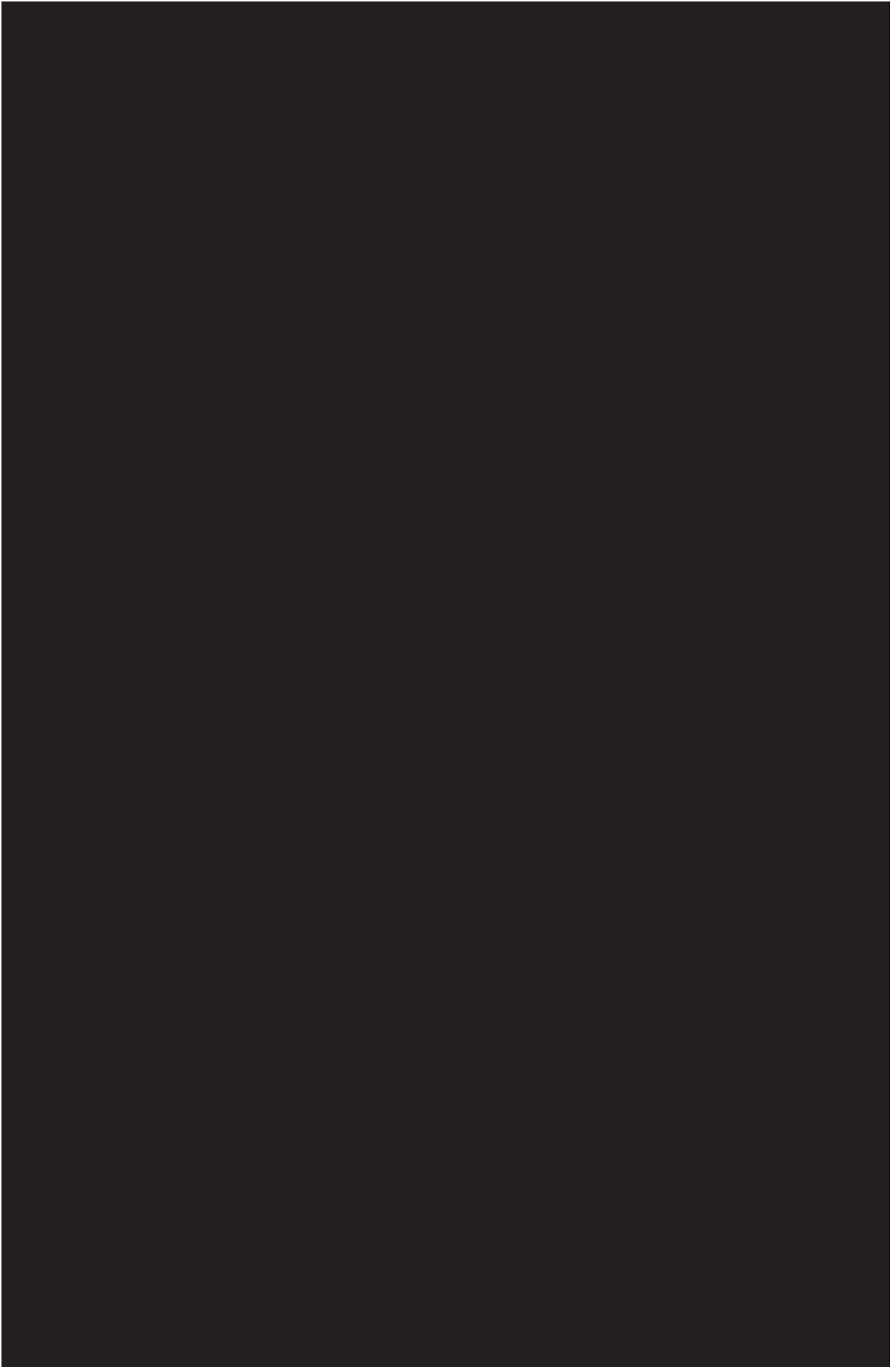
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MR. GOETZ: That's all I have. Thank you,  
sir.

THE WITNESS: Okay. Thank you.

THE VIDEOGRAPHER: We are off the record at  
5:02 p.m.



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E R R A T A

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3 PAGE LINE CHANGE

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25 REASON: \_\_\_\_\_



1 ACKNOWLEDGMENT OF DEPONENT

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I, \_\_\_\_\_, do

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hereby certify that I have read the  
foregoing pages, and that the same

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is a correct transcription of the answers  
given by me to the questions therein

5

propounded, except for the corrections or  
changes in form or substance, if any,

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noted in the attached Errata Sheet.

7

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\_\_\_\_\_  
GARY MILLIKAN

\_\_\_\_\_  
DATE

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Subscribed and sworn

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to before me this

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

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My commission expires: \_\_\_\_\_

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Notary Public

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